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ALFRED F. WHITE.

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DISTINCTION BETWEEN PLEDGE AND CHATTEL MORTGAGE.

Every banker should thoroughly understand the distinction between a chattel mortgage and a pledge. A chattel mortgage in order to protect the mortgagee, against persons subsequently acquiring a right in, or lien upon, the mortgaged property, must be executed in due form and placed on record. If a bank loans its money upon certain collateral and its rights in the collateral are secured by chattel mortgage, it is extremely important that the bank be aware of that fact. If the bank in the mistaken belief that it has the rights of a pledgee fails to record its mortgage, then it runs the risk of having its claim declared subordinate to the claim of some other party, subsequently acquiring rights in the property in question.

The essential distinction between a pledge and a chattel mortgage is this: there can be no valid pledge unless the property, which is the subject of the transaction, is delivered to the pledgee; on the other hand, the chattel mortgage usually contemplates that the mortgaged property shall remain in the possession of the mortgagor. If at the time a loan is made by a bank, the collateral securing the loan is delivered to the bank, the bank has the rights of a pledgee in such collateral. Generally speaking there is no way in which any third party can subsequently gain a lien upon the collateral superior to the claim of the pledgee bank. On the other hand, if a bank lends its money upon the security of certain collateral and the collateral remains in the possession of the borrower, the bank cannot claim to be the pledgee of the collateral. The bank in such case is merely a mortgagee.

For its own protection it is necessary that the bank in all such transactions see to it that the instrument, under which it claims a lien, is executed as a chattel mortgage in the approved statutory form and is duly filed for record as required by law. If the property remains with the borrower and the instrument is not recorded, then the borrower is in position to mislead or defraud other persons, who may deal with him on the assumption that he is the absolute owner of the property. When the mortgage is spread upon the public records, it is presumed to be notice to all persons of the rights claimed in the property by the mortgagee.

In this issue we publish a recent decision by the Supreme Court of Arkansas, Merchants' & Farmers' Bank v. Citizens' Bank, which involves the rules of law above referred to. It appeared that one Harris was the owner of certain shares of stock in the defendant bank. In 1912, he pledged this stock to a man named Henderson as security for a loan. At the time of this transaction, he delivered the stock to Henderson. Later in the same year, Harris borrowed money from the plaintiff bank. At the time of this transaction, he executed an instrument transferring the shares of stock in question to the plaintiff as security, giving the plaintiff authority to redeem the stock from Henderson. This instrument was not acknowledged and was not placed upon record. It appeared, however, that it was brought to the attention of the defendant bank and that the latter bank made no objection to the transaction. Subsequently, during the year 1913, Harris became indebted to the defendant bank. And in 1914 Henderson assigned the Harris note to the defendant bank and turned over to it the stock which he held as collateral. Under the laws of Arkansas, a bank is given a lien upon the shares of its stock for all debts due it from the owner of the stock. The question here presented is whether or not the lien upon the stock claimed by the plaintiff bank for money loaned to Harris in 1912, was superior to the statutory lien of the defendant bank which came into existence in 1913, when the defendant loaned its money to Harris.

It was held that the defendant's statutory lien was superior to the claim of the plaintiff bank. The plaintiff could not claim to be a pledgee of the stock for the reason that the stock had never been delivered to it. The only claim that it could make was that it was a chattel mortgagee. But the instrument under which this claim had to be made was neither acknowledged nor filed for record. It is provided in the laws of Arkansas that a chattel mortgage does not become a lien until it has been duly acknowledged and filed for record. The instrument held by the plaintiff was good as against Harris, but it could not be relied upon to defeat the statutory lien of the defendant, although that lien arose subsequently to the time when Harris became indebted to the plaintiff.

The moral to be drawn from this decision is, when a bank loans its money on the security of personal property and the property is not delivered into the possession of the bank, the bank should see to it that its rights are secured by a properly executed chattel mortgage and should lose no time in filing the instrument for record.

DISCOUNTING DRAFT AGAINST SHIPMENT.

An ordinary method of financing a shipment of grain, fruit, or any other commodity, is for the shipper to draw his draft on the consignee, attach the bill of lading, representing the consignment and submit the draft for discount at a local bank. The local bank usually credits the amount of the discount to the shipper's account and forwards the draft

and bill of lading to a correspondent bank at the point of delivery for collection. This bank presents the draft for payment to the consignee, who, as a general rule, must take up the draft in order to get possession of the goods.

Once in a while it happens that after the consignee obtains possession of the goods, he finds that they are not in accordance with the terms of the contract between himself and the shipper. In such a case it is the popular practice for the consignee to attach the proceeds of the transaction in the hands of the collecting bank, provided he is able to get the machinery of the law in motion before the proceeds have been sent back to the bank at the point of shipment. If the consignee happens to be too late in this respect, he is then quite likely to commence an action to recover damages for the breach of his contract, including the discounting bank as one of the parties defendant.

When a situation of this sort arises, the discounting bank will naturally take the stand that it is the owner of the proceeds of the shipment, but that in purchasing the draft, it did not assume the liabilities of the shipper or render itself liable to the consignee for any defect or shortage in the goods. On the other hand, the consignee will claim that the discounting bank upon purchasing the draft and bill of lading became the owner of the goods and stepped into the shipper's place with respect to any liability that might arise on the contract. This question was raised in a recent New York decision, American National Bank v. Warren. The opinion of the court is published in full among the legal decisions in this issue.

A firm of produce dealers in Benton Harbor, Michigan, shipped a carload of peaches to a party at Rochester, N. Y. The shipper drew a draft upon the consignee for $554.85, the purchase price of the shipment, attached a non-negotiable bill of lading covering the consignment and presented the same to plaintiff bank at Benton Harbor for discount. The plaintiff bank thereupon credited the amount upon the shipper's pass book and made the customary entries in its individual ledger. The papers were forwarded to the Lincoln National Bank at Rochester and upon arrival the draft was paid by the consignee. When the car was opened, it was discovered that the peaches did not measure up to the contract of sale. The consignee immediately commenced an action against the firm of produce dealers in Benton Harbor and attached the proceeds of the transaction in the hands of the Rochester bank. The discounting bank in Benton Harbor thereupon brought suit for the purpose of releasing the attachment. It was held that the proceeds belonged to the plaintiff bank, that it was not liable for the shipper's breach of contract and that it was entitled to have the attachment released and to recover the proceeds of the sale with interest. "The legal effect of the whole transaction," said the court, " was that plaintiff had taken over and become the owner of business paper with its collateral security under circumstances which might lead to the defeat of any attempt on its part to collect the same. Such purchase did not however,

make the bank a party to the transaction between the original parties nor subject it to any litigation in that behalf, except such as it might bring upon itself in an attempt to enforce payment of the obligation it had purchased. Warren & Smallridge (consignee) had no, nor could have any, right of action against plaintiff for breach of warranty in the sale of these peaches. Their claim, and all their claim, for loss, was solely against the firm of Burkholm & Benson (shipper). They might have refused to accept the draft; they might have accepted it, and then refused payment; in either of those events the defense of failure of consideration because of the breach of warranty would have been available to them against plaintiff. There the bank's danger ended."

Upon the question here presented there are authorities both ways. There are decisions in some states which hold that the bank which purchases a draft attached to a bill of lading and collectes the same from the consignee, renders itself responsible to the consignee for any breach of the contract of sale on the part of the shipper. On the other hand, there are decisions in other states which adopt the rule followed in the New York decision above referred to and hold that the consignee cannot look to the discounting bank in a case of this kind and that his only claim is against the shipper.

TIME WITHIN WHICH ACTION MAY BE BROUGHT UPON CERTIFICATE OF DEPOSIT.

When is a certificate of deposit outlawed? This is the proposition presented in Baxley Banking Co. v. Gaskins, recently decided by the Supreme Court of Georgia. The decision is published on a subsequent page among the legal decisions.

This question has been presented to many courts and is one upon which the courts generally disagree. In some states it is held that the statute begins to run upon a certificate of deposit payable on demand from the date of the issuance of the certificate and that an action on the certificate is barred after the elapse of the statutory period, which is usually six years. In other jurisdictions, it is held that no cause of action on the certificate accrues until the certificate is presented for payment in due form and that the statute does not begin to run against it until this act has been performed.

In the Georgia decision above referred to, the certificate was dated January 25, 1905. It was payable "twelve months after date on return of this certificate properly indorsed." It provided for interest at the rate of 6% per annnum and stipulated that interest should cease *at maturity*. No demand was made upon this certificate until July 7, 1913, more than eight years after its issuance. If the language used in the certificate made it due twelve months after date, then the statute of limitations began to run against it at that time and the certificate was outlawed. If the certificate, properly construed, meant that it was not

due until the time of the "return of the certificate properly indorsed," then the statutory period did not commence to run until the date of such presentment, namely July 7, 1913, and the action, which was commenced on May 6, 1914, was brought within the time allowed. The Georgia courts are among those which hold that the statute in a case of this kind begins to run from the date when payment is demanded and that rule was applied in the present instance. It was held that the action here was brought within proper time and that the plaintiff was entitled to recover.

The court experienced a little difficulty in reaching this conclusion because of the sentence included in the certificate "interest ceases at maturity". It was determined, however, that the word maturity, as used in this certificate, referred merely to the stopping of interest at the expiration of twelve months from the date of the certificate and was not intended to fix the date of maturity for the purpose of determining the time when the statutory period of limitations would commence to run.

LIMITING LIABILITY BY INDORSEMENT.

There are times when the holder of a note who is about to transfer it deems it expedient to take steps to limit his liability. He may, for instance, feel that he does not want to back up the financial responsibility of the maker. So he writes into his indorsement words calculated to free him from the liability of an ordinary indorser.

There seems to be a peculair belief on the part of some people to the effect that if a sufficient number of words are written into an indorsement, the indorser's liability will be thereby limited. In an early English case, Richards v. Franklin, 9 Car. P. 221, the following indorsement was used: "I hereby assign this draft and all benefit of the money secured thereby to John Grainger of Bessilsleigh, in the County Berks, laborer; and order the within named Thomas Fox Hitchcock to pay him the amount and all interest in respect thereof."

It was held that this was merely an ordinary indorsement and carried with it the liabilities which attach to such an indorsement.

In the present issue among the legal decisions is published Copeland v. Burke, recently decided by the Supreme Court of Oklahoma. The defendant Burke was the payee of a note. He indorsed it in the following manner, "I transfer my right, title and interest in the same. J. M. Burke," and delivered the note to the plaintiff. It was held that this form of indorsement in no way limited his responsibility and that he was liable as an ordinary indorser.

What the indorser should do in cases of this kind, in order to avoid being held liable as an ordinary indorser, is to indorse qualifiedly The proper way to do this is by adding the words "without recourse" to the indorser's signature. When these words form part of the indorsement, the indorsement is qualified and constitutes the indorser a mere assignor of the instrument. This does not mean that he is free from all liability.

He warrants the genuineness of the instrument, the soundness of his title to it and the capacity of all prior parties to the contract. He further warrants that he has no knowledge of any fact which would impair the validity of the instrument or render it valueless. It if turns out that the instrument bore a forged signature, or that one of the parties was an infant and therefore could not enter into a binding contract, or that there was some other defect in the instrument coming within the warranties above mentioned, then the indorser without recourse is liable. But if the instrument is entirely regular, then the holder cannot look to the indorser merely because the instrument is not paid by the maker at maturity. This expresses the liability of a qualified indorser. The way to bring about such a limitation of liability, as stated above, is to use the words "without recourse" or other words of similar import.

FRAUDULENTLY ISSUED CERTIFICATES OF DEPOSIT.

The recent failure of a trust company in New Jersey, resulting in part from the fraudulent issue of certificates of deposit by the officials of the bank, brings up the question as to the rights of the holders of such certificates. The question is answered in State v. Greenville Bank, a recent decision of the St. Louis Court of Appeals. The opinion of the court is published in full among the legal decisions in this number of the JOURNAL.

The general rule seems to be that if a certificate of this character comes into the hands of a holder in due course, that is one who receives the certificate before maturity, for value and without notice of the fraud connected with its issue, such holder may recover on the certificate.

The decision above referred to involved three certificates, all of which were issued without consideration and in fraud. It appeared that the bank by which the certificates were issued was organized by one Guhman, merely as a convenience for his check kiting operations. The first certificate called for the payment of $1000 and was payable to the order of one H. N. Barckers, and became due six months after date. Barckers and Guhman were friends and it was shown that they together procured the issuance of the certificate. Barckers subsequently assigned it to Guhman and he in turn transferred it to the plaintiff. There was sufficient evidence to show that the transfer to the plaintiff did not occur until after the maturity of the certificate. It was held, therefore, that there could be no recovery upon this certificate. The plaintiff, having received it after maturity was not a holder in due course.

The second certificate was payable to the order of Guhman. With reference to this certificate, it was shown that Guhman assigned it to a man by the name of Dobermann, who was employed in a restaurant in St. Louis. At about the time of maturity, Dobermann presented it to the bank, but the bank declined to pay it and the words "payment refused" were stamped upon it. This certificate was subsequently transferred to the plaintiff. It was held that the plaintiff could not recover

upon this certificate for the reason that he was not a holder in due course. The words "payment refused" which were stamped upon its face constituted notice to him that the bank had a defense against the certificate.

The court does not state whether or not Dobermann had knowledge of the fraudulent issuance of this certificate, but it is to be presumed that he had such knowledge, If Dobermann had been a holder in due course, then all the rights which he had in the instrument would have accrued to the plaintiff, notwithstanding his knowledge of the dishonor of the certificate. This point was brought out clearly in the court's holding as to the plaintiff's rights with reference to the third certificate.

The third certificate was also payable to the order of Guhman. It was transferred to a farmer for value and without notice of any defense to the certificate more than eight months before it became due. At maturity, he made presentment for payment and this certificate was likewise refused, but nothing was indorsed upon the certificate indicating its presentment and dishonor. The certificate remained in the possession of the holder for four years after its presentment when he sold it to the plaintiff. It was held that this certificate could sustain a recovery in favor of the plaintiff, notwithstanding the fact that it was transferred to the plaintiff after maturity. The farmer, from whom it had been received by the plaintiff was a holder in due course. Under the Negotiable Instruments Law, a person who derives title from a holder in due course and who is not himself a party to any fraud affecting the legality of the instrument, acquires all the rights of such holder.

AROUND THE CIRCLE WITH THE FARM LOAN BOARD.

The Rural Credits Bill has been the subject of much favorable comment and likewise the target of a great deal of criticism. It is difficult to tell from what one reads whether this legislation should be viewed with alarm, or whether it deserves to be pointed to with pride. One test of the act is its reception by the farmers for whose benefit it was enacted. Here we find a slight conflict of opinion, but the majority of them seem to view the law in a favorable light.

The Farm Loan Board started from Maine on its journey around the country for the purpose of fixing the districts and determining upon the places in which the farm loan banks should be located. The board found the farmers of Maine an unresponsive and disinterested lot. They evinced little concern in the new law. In Concord, N. H., the board met with an equally cold reception. The farmers there were apparently not even slightly interested in whether one of the banks would be established in their locality. Clarence E. Carr who seemed to express the general view said: "All the capital and all the money the New Hampshire farmer reasonably can ask for he can get in New Hampshire at as low a rate as the Federal Government should offer."

But, when the members of the board got to Springfield, Mass., they found the people keenly interested and they were strongly urged by those

who attended the hearing that New England should be made one of the Rural Credits Districts and that the financial headquarters of the district should be located at Springfield. At Hartford, Conn., one of those who addressed the hearing was John H. Hale, of Glastonbury, known as the "peach king," who stated that the average farmer found it difficult to get money at reasonable rates and that in the last fifteen years there had been an influx of intelligent farmers who had bought farms and needed money to cultivate them, but were unable to do so on account of the terms demanded on long time notes.

The board was warmly welcomed at Utica and here listened to testimony to the effect that the establishment of a farm loan bank would greatly benefit the average farmer. The banks and trust companies of Utica united in a statement to the board to the effect that the financial institutions of that city would not be prejudiced in any way against the establishment of a farm loan bank in Utica and that it was their belief that such an institution would be a real benefit to the surrounding farm community.

The reception at Utica was duplicated at Lansing, Mich., where more than 100 farmers from all parts of the state came in for the hearing. The banking interests of Michigan were also represented and joined with the agriculturists in expressing the need for a farm bank and in giving testimony to the advantages presented by Lansing as a location for one of the land banks. Likewise in Spokane the board found the people awake to the advantages offered to them by the Farm Loan Act. Farmers who appeared as witnesses before the board, declared that they were paying 10 to 12% interest for their mortgages and that in most instances it was more than they could pay. For the purpose of showing the Federal Farm Loan Board that there is co-operation instead of factional strife among the cities of Washington the Seattle Chamber of Commerce, at a special session held on September 1st, went on record as unanimously in favor of having one of the land banks located in Spokane.

BANK PURCHASING SYNDICATES.

A syndicate of men under the management of a New York attorney has recently sent out a letter, accompanied by a form of agreement, to the shareholders of the Merchants' National Bank of New York, requesting them to sign a power of attorney appointing one or all of the men named in the letter as their proxies, and giving the syndicate an option on the stock until March 1, 1917, with the privilege of selling it to undisclosed parties at a price named.

As neither the management nor directors of the bank were consulted, it is quite clear that the syndicate intends, if possible, to wrench the control of the bank from its present ownership, and elect such officers and directors as will best suit their purpose, all of which has the appearance of a speculative scheme.

There can be no doubt as to the legal right of any man or syndicate of men to purchase the stock of a banking or other corporation from owners who desire to sell; but in instances where a corporation is to a certain extent a public institution, there are other aspects to be considered.

A banking corporation operating under a State or Federal charter is held responsible by a State or Federal Government for the fulfillment of the statute governing it, because it not only becomes the custodian of the funds of many people, but oftentimes the custodian of public funds. Thus a bank in a large measure is a public institution.

When syndicates of men decide for the purpose of speculation to obtain control of an old and honored institution and place it under new ownership and new management, there are several very serious things to be considered by the shareholders before they dispose of their holdings to men unfamiliar with the patronage of the institution, lest those who retain their holdings might be made to suffer extensively, whereas by the continuation of the present management it is absolutely certain that the customers and shareholders' interests will all be best conserved.

If, because it has always been the policy of each successive management during the one hundred and fourteen years of the bank's existence to operate on strictly conservative lines, which assures absolute safety through all kinds of depressions, it may not have acquired quite the volume of deposits that some few other banks in the community have, its records nevertheless show that its management has always been worthy of the trust reposed in them and shareholders have received profits every year, which in the aggregate are far greater than if there had been lean and fat years. Colossal figures are not the only synonym for strength and soundness.

Changing the control and management of an institution of this character is like "swapping horses in the middle of the stream." New shareholders, new officers and new directors must be installed and the bank's policy changed, perhaps from that of conservatism to one that might not meet the approval of the majority of the bank's old customers; new patronage would have to be secured, and perhaps new inducements offered.

It is no doubt the belief of those composing the syndicate, than on account of the bank's long, honorable career and reputation, no trouble will be experienced in its acquiring much new business, or they would not have attempted to purchase its control.

As a very large portion of the total volume of business is transacted today through what can be termed medium channels, banking institutions of medium size are essential. They occupy an important position in the financial structure of the country and render a necessary and invaluable service to the general public. It is to be hoped that, for the sake of the patrons whom it has so long and zealously served, the management of the Merchants' National Bank will remain unchanged.

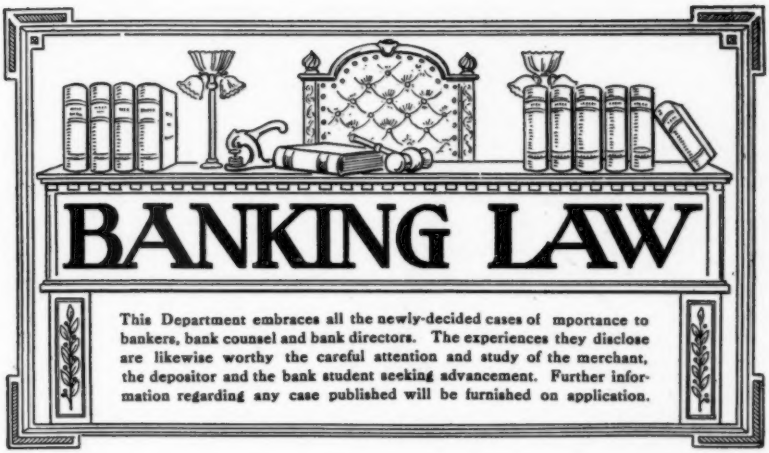
The following men are the directors of the Merchants' National Bank: John A. Stewart, Chairman Board of Trustees, United States Trust Co; Robert M. Gallaway, President; Charles D. Dickey, Brown Brothers & Co., Bankers; Edward Holbrook, President, Gorham Manufacturing Co., Vice-President; William A. Taylor, Taylor, Clapp & Co., Dry Goods Commission; George Zabriskie, Zabriskie, Murray, Sage & Kerr, Lawyers; Charles A. Boody, President, The Peoples Trust Co. of Brooklyn; James C. Colgate, James B. Colgate & Co; Gustav Schwab, Oelrichs & Co; Joseph Byrne, Vice-President and Cashier; T. Frank Manville, President, H. W. Johns-Manville Co; John P. Stevens, J. P. Stevens & Co., Dry Goods Commission.

COSTS OF COLLECTION.

In the case of Letcher v. Wrightsman, recently decided by the Supreme Court of Oklahoma and published among the legal decisions in this issue, the court was called upon to construe the words "costs of collection" in a promissory note.

In the language of law, the word "costs" means those statutory allowances which are ordinarily awarded to the prevailing party for the purpose of reimbursing him for the expenses which he has incurred in bringing the action. The plaintiff in this action argued that the words used in this note could not be confined to legal costs and that, under this provision for the costs of collection, he was entitled to a reasonable attorney's fee. The defendant on the other hand, contended that the plaintiff was not entitled to an attorney's fee in addition to the amount due on the note for the reason that the note did not specifically provide for an attorney's fee. The defendant cited authorities to show that attorney's fees are not "costs" and that attorney's fees provided for in a note are a part of the debt and not costs of the action. The court admitted the correctness of the rule expressed in the authorities, but held that they had no application to the situation here presented. The court referred to a statute providing that "the words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed:"

"Under this rule of construction," said the court, "the word 'costs,' used in the note sued on, evidently is synonymous with 'expense.' To give it any other meaning would make the agreement in the note wholly useless, since the maker would be responsible for costs of suit without any agreement therefor being embodied in the note. The costs of collection, therefore, must be held to embrace attorney's fees and to include a reasonable compensation for the attorneys bringing suit in an endeavor to collect the note, since such attorney's fees are a part of the expenses of collection."


BANKING LAW
This Department embraces all the newly-decided cases of importance to bankers, bank counsel and bank directors. The experiences they disclose are likewise worthy the careful attention and study of the merchant, the depositor and the bank student seeking advancement. Further information regarding any case published will be furnished on application.

DISCOUNT OF DRAFT AGAINST SHIPMENT.

American National Bank v. Warren, New York Supreme Court, 160 N. Y. Supp. 413.

A produce firm drew a draft to its own order upon the consignee of a carload shipment and delivered it to the plaintiff bank with a non-negotiable bill of lading for discount. The plaintiff credited the amount to the consignor and forwarded the draft for collection. It was paid by the consignee, who immediately thereafter attached the proceeds in the hands of the collecting bank in an action against the consignor, based upon a breach of warranty as to the quality of the goods. In an action subsequently brought by the plaintiff bank, it was held that the proceeds of the draft belonged to it, that it was not liable for the shipper's breach of warranty and that it was entitled to have the attachment released and to recover the proceeds of the draft with interest.

Action by the American National Bank against Almond J. Warren and others. Judgment directed for the release of the attached moneys, with interest, to plaintiff.

Medcalf, Averill & Tompkins, of Rochester, for plaintiff.

Arthur T. Pammenter, of Rochester, for defendants.

SAWYER, J. This action was brought for the release of the proceeds of a draft collected by the Lincoln National Bank of Rochester from a levy thereon made by the defendant Brown, as sheriff, under a warrant of attachment issued in an action brought by the defendants Warren & Smallridge against the copartnership of Burkholm & Benson, and to recover damages resulting from the levy. The facts, so far as material, are as follows:

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §76.

Plaintiff is a national bank located at Benton Harbor, Mich. Among its depositors was the copartnership of Burkholm & Benson, produce dealers of the same town. On September 15, 1914, Mr. Benson, of this firm, presented to the bank for discount a draft for $554.85, payable to his firm's order, and drawn upon the defendants Warren & Smallridge, to which was attached a nonnegotiable bill of lading for a carload of peaches shipped by Friday Bros., of Coloma, Mich., to Warren & Smallridge. Burkholm & Benson were given credit for the face of the draft in their passbook by plaintiff, who also gave them the same credit in their account on its individual ledger. Plaintiff then forwarded the draft with the bill of lading attached to the Lincoln National Bank of Rochester, with instructions to hold for the arrival of the car and to wire nonpayment. On the arrival of the car the draft and bill of lading were presented to the drawee, the defendants Warren & Smallridge, who accepted the same and gave to the Lincoln National Bank a certified check for $554.85 in payment thereof, receiving at the same time from said bank the draft and bill of lading. The defendants Warren & Smallridge immediately brought action for breach of warranty against Burkholm & Benson, procured a warrant of attachment, and delivered same to the defendant Brown, as sheriff of Monroe County, N. Y., who levied under their direction upon the proceeds of the draft still in the possession of the Lincoln National Bank. Burkholm & Benson continued to do business with the plaintiff, and at no time prior to such levy and notice thereof to it was their account with plaintiff less than said sum of $554.85, although it appears that, at some time later, their account was below that amount and was occasionally overdrawn.

The plaintiff contends that it is the owner of the proceeds of this draft, while the defendants Warren & Smallridge claim that such proceeds belong to Burkholm & Benson. In his brief, filed after the close of the trial, defendants' counsel for the first time raised the questions that plaintiff has an adequate remedy at law, and that the action is not an equity action, but that defendants were entitled to a trial by jury of the issues herein.

It does not seem necessary to determine whether or not this is so. That plaintiff has an adequate remedy at law is not pleaded, and all parties have, from the beginning, treated this as an action in equity, and proceeded to and through the trial upon that theory. Under such circumstances, defendant has waived both questions, and is estopped from, at this late day, making a demand for trial by jury. Mentz v. Cook, 108 N. Y. 504, 15 N. E. 541; Lough v. Outerbridge, 143 N. Y. 271-277, 38 N. E. 292, 25 L. R. A. 674, 42 Am. St. Rep. 712; Code Civ. Proc. § 1009, subd. 4.

By this transaction plaintiff became indebted to the firm of Burkholm & Benson in the sum of $554.85, and as an offset to such indebted-

ness became the owner of the draft in question, and as a collateral security thereto of the goods represented by the bill of lading, which was attached. Albany County Bank v. People's Ice Co., 92 App. Div. 47, 86 N. Y. Supp. 773; Am. T. & S. Bank v. Austin, 25 Misc. Rep. 454, 55 N. Y. Supp. 561; Goetz v. Bank of Kansas City, 119 U. S. 551, 7 Sup. Ct. 318, 30 L. Ed. 515; Commerical Bank v. Pfeiffer, 108 N. Y. 242, 15 N. E. 311; Personal Property Law, § 216, added by Laws 1911, c. 248. See, also, the Michigan act. In the last-cited case the rule is laid down by Chief Judge Ruger (108 N. Y. 250, 15 N. E. 313), in the following emphatic language:

"It is settled beyond dispute in this state that the discount of a draft drawn by a consignor upon his consignee, which is accompanied by a delivered bill of lading to the party making the advance, passes to such party not only the legal title to such property, but in the eye of the law the transfer of the bill of lading is regarded as an actual delivery and an actual change of possession of the property."

I am not unmindful of the fact that, in the case now under consideration, physical consignment of the goods was made at Coloma, Mich., by the firm of Friday Bros. They were the vendors thereof to Burkholm & Benson, and in the shipment to Warren & Smallridge acted under that firm's instructions and as its agent, and Burkholm & Benson were the real consignors.

The legal effect of the whole transaction was that plaintiff had taken over and become the owner of business paper with its collateral security under circumstances which might lead to the defeat of any attempt on its part to collect the same. Such purchase did not, however, make the bank a party to the transaction between the original parties, nor subject it to any litigation in that behalf, except such as it might bring upon itself in an attempt to enforce payment of the obligation it had purchased. Warren & Smallridge had no, nor could have any, right of action against plaintiff for breach of warranty in the sale of these peaches. Their claim, and all their claim, for loss, was solely against the firm of Burkholm & Benson. They might have refused to accept the draft; they might have accepted it, and then refused payment; in either of those events the defense of failure of consideration because of the breach of warranty would have been available to them against plaintiff. There the bank's danger ended.

Nonnegotiable paper may be bought and sold, and ownership thereof passed, as effectively as in the case of negotiable paper. The holder of nonnegotiable paper, and, equally so, a holder not in due course of negotiable paper, is under no disability regarding it, except that he does not take it free from possible defenses.

This draft was, however, both accepted and paid by Warren & Smallridge, and the security which plaintiff held as collateral thereto surrendered to them. That its proceeds were the property of plaintiff seems beyond dispute, and their attachment as the property of Burk-

holm & Benson cannot be sustained. My attention has been called to certain decisions in the courts of other states as bearing upon the rights of the parties herein. Tapee v. Varley Wolter Co., 184 Mo. App. 470, 171 S. W. 19; Tolerton v. Anglo-Col. Bk., 112 Iowa, 706, 84 N. W. 930, 50 L. R. A. 777; Leonhardt v. Small, 117 Tenn. 153, 96 S. W. 1051, 6 L. R. A. (N. S.) 887. But it does not seem profitable to here discuss them at length. It is sufficient to say that generally they sustain the proposition, hereinbefore announced, that a discounting bank does not assume the liabilities of its customer, except in so far as same may be used as a defense against the paper itself. I am not aware of any decisions by the courts of this or any other state to the effect that the proceeds of a draft paid to a holder not in due course, he being free from fraud or actual bad faith, can be still reached by the drawee for demands against his drawer. Nor do I think such is the law.

It is not claimed that plaintiff had notice of any defect in the goods described in the bill of lading, nor is there any proof of its bad faith in the transaction. Quite likely it could, under well-understood banking rules, have charged the amount of this draft back to Burkholm & Benson, and thus protect itself from loss. We are not concerned with its reason for not so doing. It had two remedies, and has made an election as to which it would adopt. To my mind that election in no way imports bad faith in its dealings with this paper.

The amended complaint herein is based upon the theory that plaintiff is the owner of the proceeds of the draft in question, and that an attachment thereof could not lie in behalf of Warren & Smallridge in their action against Burkholm & Benson. Plaintiff's mistaken belief that it was a bona fide owner and holder of the draft itself reaches only the quality of its ownership, and in no way militates against the general pleading showing its right to recover.

The demand that plaintiff be awarded damages to cover its legal expenses incurred herein is somewhat unusual. It is true that in actions founded upon bonds or undertakings in attachment proceedings legal expenses are held to be legitimate items of damage. This, however, is founded in the nature of the obligation sued upon, which must provide, in case of default, for a reimbursement of all costs and damages. Code Civ. Proc. § 640.

Ordinarily a successful litigant can have no recovery for such damage beyond the costs provided by statute to be taxed, and there seems to be nothing here, where that contractual relation between the parties does not exist, to take the case out of the usual course.

Judgment for the release of the attached moneys, with interest, to plaintiff, is directed, with costs.

BANK AS HOLDER IN DUE COURSE.

McLean County Bank v. Brown, St. Louis Court of Appeals, Missouri, July 5, 1916. 187 S. W. Rep. 785.

The assignment of notes before maturity to a bank, as collateral for a loan, without notice of any equities between the original parties, makes the bank a holder in due course. The defense of want of consideration is not available against the bank.

Appeal from Circuit Court, Pike County; Edgar B. Woolfolk, Judge.

"Not to be officially published."

Suit by the McLean County Bank against Elmer E. Brown. From a judgment for defendant, plaintiff appeals. Judgment reversed, and cause remanded, with directions to give judgment for plaintiff.

Robert L. Motley, of Bowling Green, and Clarence A. Barnes, of Mexico, Mo., for appellant. D. A. Ball and Pearson & Pearson, all of Louisiana, Mo., for respondent.

NORTONI, J. This is a suit in as many counts on two promissory notes. The finding and judgment were for defendant, and plaintiff prosecutes the appeal.

The notes sued upon are of date November 25, 1911, and in the amount of $260 each, one payable four months and the other eight months, respectively after date, to the Pioneer Stock Powder Company, a copartnership. On December 26, 1911, the copartnership was incorporated under the same name; that is, the Pioneer Stock Powder Company. On December 30, 1911, the two notes in suit were hypothecated to plaintiff bank for an indebtedness of the Pioneer Stock Powder Company. The indebtedness to the plaintiff bank, to which the notes were deposited as collateral, continued for some time through renewal notes, and during all of the time the plaintiff bank held the two notes in suit here as collateral to such indebtedness. There appears to be no valid defense made to the notes in suit. The answer admits the execution of the notes by defendant to the Pioneer Stock Powder Company, a copartnership, and it is conceded that the notes have never been paid. It is averred in the answer, however, that the plaintiff bank did not become the holder of the notes for value, before maturity, by indorsement or assignment by the payee thereof. A further defense set forth in the answer sets up a contract of even date with the notes by which it is said the payee—that is, the Pioneer Stock Powder Company—took the notes from defendant merely to represent the value of certain powder delivered by it to defendant for sale; that defendant was merely the selling agent of the powder company, and the notes were not to be paid in event the powder was not sold. It is averred, too, that the powder was not sold, and therefore there is no consideration for the notes.

NOTE.—For other similar decisions, see Banking Law Journal and Digest, §219-228.

By his answer defendant denies that the plaintiff bank became the holder of the notes in suit for value, before maturity, by indorsement or assignment of the payee. The evidence is all contrary to this, for it appears that the notes were duly assigned on September 30th by the partnership, Pioneer Stock Powder Company, through its indorsement affixed thereon by M. A. Letson, one of the partners, and such is sufficient. This assignment, made long before the maturity of the notes, to the plaintiff bank as collateral security for a loan, without notice of whatever of any equities existing between the original parties, renders the holder secure on that score. In such circumstances the defense of want of consideration is not available, for the holder is regarded as one in good faith and for value. See Bank v. Cape Girardeau & C. R. Co., 172 Mo. App. 662, 155 S. W. 1111. We are unable to discover any defense whatever as against plaintiff bank, who became a holder of the notes in good faith and for value, before maturity, and also without notice of existing equities, which might be available between defendant and the original payee.

The judgment should be reversed, and the cause remanded, with directions to the trial court to give judgment for plaintiff for the amount of the notes and interest thereon. It is so ordered.

REYNOLDS, P. J., and ALLEN, J., concur.

FRAUDULENTLY ISSUED CERTIFICATES OF DEPOSIT.

State v. Greenville Bank, St. Louis Court of Appeals, Missouri, July 5, 1916. 187 S. W. Rep. 597.

Three certificates of deposit were fraudulently issued by the officers of a bank. The first certificate was transferred to the plaintiff after maturity. It was held that the holder could not recover on this certificate.

The second certificate was transferred by the payee to a party who presented it at maturity. The certificate was dishonored and the words "payment refused" were stamped upon it. It was afterwards transferred to the plaintiff. It was held that there could be no recovery.

The third certificate was transferred to a farmer for value before maturity. He presented it at maturity and payment was refused. Four years later it was transferred to the plaintiff. It was held that the plaintiff having derived his title through a holder in due course, although after maturity, could recover on the certificate.

Appeal from Circuit Court, Wayne County: E. M. Dearing, Judge.

Insolvency proceedings by the state of Missouri, on relation of Herbert S. Hadley, Attorney General, against the Greenville Bank, in which John T. Wilson intervenes. From a judgment denying intervener's right to recover, he appeals. Reversed and remanded, with directions.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement § 94,96

Munger & Lindsay, of Piedmont, J. H. Raney, of Patterson, and Orchard & Cunningham, of Eminence, for appellant. J. F. Meador, of Greenville, for respondent.

NORTONI, J. This is an appeal on the part of the intervener from a judgment denying his right to recover on three separate certificates of deposit issued by the defendant Greenville Bank. The original proceeding was instituted by Hon. Herbert S. Hadley, Attorney General, ex officio, for the appointment of the receiver of defendant bank on account of its insolvency. The application for a receiver on the part of the Attorney General was sustained and a receiver duly appointed.

It appears that the bank had issued several certificates of deposit without consideration and in fraud. Subsequently, proceedings were had at the instance of the receiver of the bank looking to the cancellation of the several certificates of deposit involved here. Thereupon John T. Wilson intervened, asserting that he was the holder of the three certificates of deposit involved and sought a recovery thereon and allowance against the funds of the bank in the hands of the receiver.

The petition of the intervener is in three counts declaring separately on each of the three certificates of deposit. The first certificate appears to have been issued by defendant bank on September 20, 1906, for $1,000, payable to the order of H. N. Barckers, and by its terms became due six months after date. The second certificate was issued by the bank on October 13, 1906, in the amount of $575, to the order of John S. Guhman, and by its terms is due and payable one year after its date. The third certificate of deposit was issued by the bank November 14, 1906, for $600, to John S. Guhman, and by its terms payable nine months after date. All of the certificates of deposit possess the characteristics of a negotiable promissory note, and this is conceded throughout the case. The case was tried before the court without a jury, and no instructions were asked or given. The receiver asserted in defense that the several certificates were issued in fraud and without consideration, and that the intervener either knew of these facts, or at least became the holder of each and all of the certificates after the maturity so as to render the defense as set forth available against him. It appears from the evidence that the bank was conceived in iniquity and born in fraud. John S. Guhman organized the institution in August, 1906, apparently as a convenience through which he might "kite" checks. As before said, there is an abundance of evidence that all of the certificates involved here were issued in the first instance in fraud of the bank through the cooperation of John S. Guhman, who organized the institution, the president of the bank, and its cashier. The first certificate declared upon—that is, the one of date September 20, 1906, for $1,000, due six months after date—is payable to H. N. Barckers. The evidence is that Barckers and Guhman were friends, and they together procured the issuance of the certificate to Barckers, and Barckers assigned it to Guhman, who, it is said, subsequently assigned it to Wilson, the intervener. How-

ever, there is substantial evidence in the record given by the receiver of the bank tending to prove that Barckers still held the certificate on April 8, 1907—that is, after it was due—and presented it for payment to the receiver. In view of this, it is clear that the judgment of the court denying the intervener's right of recovery on this certificate is to be sustained, for that it appears the certificate was negotiated to him by the payee after it was due and is therefore subject to the equities which existed between the bank in the first instance and the payee, Barckers, to the effect that it was issued to him in fraud and without consideration.

The second certificate—that is, the one of date October 13, 1906, for $575, payable one year after date—was issued to John S. Guhman in person, and the intervener asserts title through him. This certificate, too, was issued by the officers of the bank conspiring with Guhman and in fraud of the institution. But the intervener, Wilson, asserts he is an innocent holder thereof in due course. The evidence touching this certificate is to the effect that Guhman assigned it to one Dobermann, who worked at a resturant in St. Louis, and Doberman caused it to be presented for payment to the Greenville Bank, which issued it about the time it was due. But the bank declined to pay it; that is, the paper was dishonored, and this fact was stamped upon it; that is, the words "payment refused" were stamped upon it. Subsequently, after the certificate was thus dishonored and indorsed, it was negotiated to the intervener, Wilson. Obviously the intervener is not an innocent holder in due course in so far as this certificate is concerned, for it is conceded that it was dishonored when due and it was then in the hands of Dobermann who owned it. Thereafter the intervener, Wilson, says he purchased it, and it is conceded that it carried the insignia of dishonor stamped upon it. Absence or failure of consideration is a matter of defense as against any person not a holder in due course. See section 9999, R. S. 1909. A "holder in due course" is not only one who has taken an instrument which is complete and regular upon its face, but moreover one that has become the holder of it before it was overdue and without notice that it was previously dishonored. See section 10022, R. S. 1909. The court very properly found the issue in respect of this matter and denied the intervener's right of recovery on this certificate.

Touching the certificates of date November 14, 1906, payable nine months after date to the order of John S. Guhman, it is to be conceded that the evidence shows this certificate was negotiated for value to Emil Witte, a farmer near Ferguson, Mo., in the month of November, in which it was issued and more than eight months before it was due. It is to be conceded, too, that Witte thus acquired good title to the paper, for he was wholly without knowledge of any infirmity therein and paid value for it. After acquiring the certificate in November, 1906, Emil Witte presented it for payment to the Greenville Bank, when due, and was refused. Nothing is indorsed on the certificate itself touching this matter however. Witte continued to hold the certificate after its dishonor for

about four years until August, 1911, when the evidence shows he sold it to the intervener, Wilson. There can be no doubt that Witte was a holder in due course and in good faith, as it is clear he paid value for the certificate and purchased it eight months before it was due. There is nothing in the case tending to prove that Wilson, the intervener, was a party to the fraud in procuring the issue of the certificate originally, or that he had any knowledge concerning it whatever. He succeeded to the title of Witte, a holder in due course, several years after the paper was due. However this may be the statute (section 10028, R. S. 1909) provides:

"But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter."

The rule of law thus declared is the same as that which prevailed before the adoption of the statute, as will appear by reference to First National Bank of Cameron v. Stanley, 46 Mo. App. 440, 449. It is clear Witte was a holder in due course and possessed good and unimpeachable title to this certificate, and Wilson, the intervener, succeeded to the same.

The court erred in denying the right of Wilson to recover on this certificate of date November 14, 1906, for $600 and interest. The judgment should therefore be reversed, and the cause remanded, with directions to the trial court to enter judgment in favor of defendant bank on the finding for it as to the certificate for $1,000, dated September 20, 1906, and also on the certificate for $575, of date October 13, 1906, and in favor of Wilson, the intervener, on the certificate for $600, of date November 14, 1906, with interest thereon. It is so ordered.

REYNOLDS, P, J., and ALLEN, J., concur.

PROMISSORY NOTE GIVEN TO FACILITATE DIVORCE.

Hood v. Roleson, Supreme Court of Arkansas, July 10, 1916. 187 S. W. Rep. 1059.

A promissory note, given by a man upon consideration that his wife should not defend a divorce action which he had instituted, is against public policy and void and cannot be enforced by the payee.

Appeal from Circuit Court, Lee County; S. H. Mann, Special Judge.

Suit by H. F. Roleson and others against J. B. Hood and others. From a judgment for plaintiffs, defendants appeal. Judgment reversed, and cause remanded for new trial.

D. S. Plummer, of Marianna, for appellants. Fink & Dinning, of Helena, for appellees.

HART, J. Appellees sued appellants to recover $1,400 balance alleged to be due on a promissory note. The material facts are as follows: J. B. Hood and Nannie L. Hood were married in the year 1912, and lived together as husband and wife until the year 1913, when they separated. Mrs. Hood first went to Michigan on an extended trip and subsequently went to Memphis. While in Memphis she became very ill and was carried to a hospital. During her stay in Memphis she incurred numerous debts and charged them to Mr. Hood's account. Finally Hood published a notice in a Memphis paper to the effect that he would no longer be responsible for anything purchased by his wife. Since their separation he has remained in Arkansas.

After Mrs. Hood got well she returned to Arkansas and instituted a suit against her husband for alimony. Mr. Hood filed an answer to her bill for alimony and also a cross-complaint, in which he sought a divorce from her. Finally a contract was entered into between the parties which resulted in the execution of the note sued on. The note was executed July 20, 1914, by J. B. Hood as principal and J. B. Daggett, C. E. Daggett, and Morris Lesser as sureties, and was payable to the order of Roleson McCulloch. It was for $2,250. The agreement was that Mrs. Hood dismiss her action for alimony and make no defense to her husband's suit for divorce; and, in consideration therefor, Mr. Hood was to pay to her $2,000, and $250 for attorney's fee. Mrs. Hood made no defense to the action for divorce and Mr. Hood was granted divorce on his cross-complaint. He made payments on the note which reduced it to $1,400. The above facts were testified to by Mr. Hood, by one of his sureties, and by his attorney in the suit for alimony and divorce.

According to the testimony of H. F. Roleson, one of the attorneys for Mrs. Hood in the alimony suit, the note in question was executed in settlement of her suit for alimony and the fees of her attorneys, and that the contract was independent of the divorce proceedings. The court directed a verdict in favor of appellees, and the case is brought before us on appeal.

Counsel for appellees seek to uphold the judgment on the ground that the consideration sued on was the adjustment of the property rights merely between the parties. Such agreements standing alone are not invalid. Pryor v. Pryor, 88 Ark. 302, 114 S. W. 700, 129 Am. St. Rep. 102; McConnell v. McConnell, 98 Ark. 193, 136 S. W. 931, 33 L. R. A. (N. S.) 1074. Other cases from this court might be cited to sustain this proposition, but it is so well settled as to render further citation of authorities useless. The testimony of appellees was sufficient to uphold a verdict in their favor, but we are dealing with a directed verdict in favor of appellees.

According to the testimony of appellants, the general purpose of the agreement was to facilitate the procuring of a divorce. A lump sum was agreed to be paid in settlement of the alimony suit and also to facilitate the procurement of a divorce. A part of the consideration for the execu-

tion of the note was that Mrs. Hood should not file an answer to the cross-complaint of Mr. Hood and should make no defense to his action for divorce. Such contracts are against public policy and void, notwithstanding the existence of legal grounds for divorce. The reason given in many of the cases is that the marital relation, unlike ordinary contractual relations, is regarded by the law as the basis of the social organization. The preservation of that relation is deemed essential to the public welfare. Rowe v. Young, 185 S. W. 438; Viser v. Bertrand, 14 Ark. 267. In the latter case the plaintiff, an attorney, had bound himself at the request of the defendant to pay $300 to the defendant's husband as a consideration for the relinquishment of the latter's claim to certain negroes, and his promise to make no further opposition to her suit for divorce. It was held that the agreement was against public policy and the plaintiff could not recover the $300.

The rule is well established that an agreement intended to facilitate the procuring of a divorce is against public policy, and any promise founded on such an agreement is void. See case note to 11 Ann. Cas. at page 377. It follows that the court erred in directing a verdict in favor of appellees.

The record shows that the suit was brought by Roleson and McCulloch for themselves and for the benefit of C. L. Lippincott as administrator of Allie L. Hood, deceased. It is claimed that H. F. Roleson deposited the note as collateral security with McClintock Banking Company for an indebtedness of $250 due by him to the bank, and that the bank is an innocent purchaser for value before maturity of the note to the extent of Roleson's indebtedness to it. The record, however, shows that the bank is not a party to this suit, and its rights are in no wise affected thereby.

For the error in directing a verdict for appellees, the judgment must be reversed, and the cause will be remanded for a new trial.

McCULLOCH, C, J., being disqualified, did not participate.

LIABILITY OF ACCOMMODATION INDORSER.

Brookland Bank v. Martin, Supreme Court of South Carolina, July 19, 1916. 89 S. E. Rep. 846.

Where a landlord signed his tenant's promissory note as accommodation indorser and received $200 on account of rent due out of the proceeds of the note, it was held that he could not escape liability on the note by claiming that he did not read the note and signed it under the impression that he was merely signing a waiver of rent.

Appeal from Common Pleas Circuit Court of Richland County; I. W. Bowman, Judge.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §20

Action by the Brookland Bank against John F. Martin and A. W. Martin. Judgment for plaintiff, and defendant A. W. Martin appeals. Affirmed.

De Pass & De Pass, of Columbia, for appellant. D. W. Robinson, of Columbia, for respondent.

GAGE, J. Action on two notes, one for $100, and one for $2,200; verdict directed for the plaintiff; appeal by the defendant A. W. Martin.

The appellant's counsel conceded at the hearing that a verdict ought to have been directed as to the small note. The appellant's counsel also stated at the hearing that there was only one issue to be decided, and that was whether A. W. Martin signed the large note under a misrepresentation of the bank. The one exception is, that the complaint alleged a case of fraud and misrepresentation, and that the testimony tended to prove it.

It is now settled that if only one reasonable conclusion may be drawn from all the testimony, then the court ought to declare that conclusion by direction to the jury. Howell v. Railroad, 99 S. C. 421, 83 S. E. 639; Dutton v. Railroad, 104 S. C. 16, 88 S. E. 263. The rule so stated, while it admits of diversity of judgment, is the only practicable rule which may be formulated.

The defendant A. W. Martin is a landlord, he was a farmer; but he removed from the farm to Brookland to open a "little store."

John Martin was a tenant on the farm and was to pay $240 rent for the year 1913; and he had been a tenant for three or four years before 1913. On March 14, 1913, John F. Martin executed to the plaintiff a note for $2,200. The defendant A. W. Martin signed his name across the back of the note and expressly guaranteed its payment.

At the trial he sought to prove a totally different transaction from that evidenced by the note. To do that the defendant set out to allege and prove—and that he must do to escape liability—that the real transaction was not written down, and that by reason of the deceit of the plaintiff. The burden was upon him to show that, and his failure thereabouts lets fall his defense and entitles the plaintiff to recover on a transaction all together regular and proven but for the defendant's contention.

The answer hardly pleads fraud by the bank; it does not in words; it does allege that the bank misrepresented the transaction, and falsely so; it does not allege that the bank had the secret and wicked purpose to deceive the defendant, and proceeded by denominated words and acts to carry out that intent.

A complaint for fraud, like an indictment for crime, ought to signalize first the intent, and then the words spoken, and the acts done to carry out the intent.

But giving the largest meaning to the answer, construing it liberally, the proof fell far short of making out any fraud. The defendant's evidence is inconsistent with itself. He testified that he intended only

to sign a waiver of his rent; yet he admitted, "I got $200 out of the $2,200 loan for the rent of 1912."

The defendant was asked, "When you signed your name to that, what did Mr. Trotti (the bank president) say to you?" He answered, "Didn't say anything; just said sign here; no explanation given at all." And that statement, or its equivalent, was repeated; and the same thing was testified to by the defendant's other witness Bostick. It is true the defendant said he expected Mr. Trotti to write down that which they had aforetime agreed on; but he was a merchant, could read and write, and he says he never read that which he signed; his words were, "I do not pay attention to anything like that." Testimony like that amounts to nothing when it is put alongside of the defendant's written promise, and when the defendant got $200 cash out of the promise.

The court's plain duty was to direct a verdict, and the judgment is affirmed.

GARY, C. J., and HYDRICK, WATTS, and FRASER, JJ., concur.

NOTE PROVIDING FOR COSTS OF COLLECTION.

Letcher v. Wrightsman, Supreme Court of Oklahoma, July 11, 1916. 158 Pac. Rep. 1152.

An agreement in a promissory note to pay "costs of collection" in the event that the note is not paid at maturity, authorizes the recovery of $35 as attorney's fees in an action on the note.

Commissioners' Opinion, Division No. 1. Error from County Court Tulsa County; Con Linn, Judge.

Action by C. J. Wrightsman against F. R. Letcher. Judgment for plaintiff, and defendant brings error. Affirmed.

H. B. Martin, A. F. Moss, and Chas. R. Bostick, all of Tulsa, for plaintiff in error. C. E. Bush and Biddison & Gore, all of Tulsa, for defendant in error.

RUMMONS, C. This action was commenced in the county court of Tulsa county, by the plaintiff in error, against defendant in error, to recover upon a promissory note which was in the following form:

"400.00 Tulsa, Oklahoma, Aug. 9, 1913.

"Two months after date, for value received, I promise to pay to the order of C. J. Wrightsman, four hundred & 00/100 dollars at the Central National Bank of Tulsa, Okl., with interest at 8 per cent per annum from date, payable annually, until paid. The principals, sureties and indorsers hereon severally waive protest, demand, and notice of nonpayment, and hereby agree that this note may be extended from time

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §51

to time without notice, and without impairment of any obligation upon the part of any surety, guarantor or indorser hereon, and if not paid at maturity we agree to pay all costs of collection.

"P. O. Oct. 29. F. R. Letcher."

Indorsed:

"Nov. 4, 1913, paid $50.00 fifty and 00/100."

The case was tried to a jury, resulting in a verdict for the defendant in error, which was in words and figures as follows:

"We, the jury, duly inpaneled and sworn in the above-entitled case, do find the issues for the plaintiff and assess the amount to which he is entitled to recover at $275.00 with interest and $35.00 attorney's fees.

"W. F. Taylor, Foreman."

Upon this verdict the court rendered judgment against the plaintiff in error for the sum of $275, principal, $23.40 accrued interest, and $35 attorney's fee.

Plaintiff makes two assignments of error, the first of which complains of the following instruction by the court:

"The court further instructs the jury that upon the whole case, if they find in favor of the plaintiff under instructions herein, then, plaintiff is entitled to recover a fair and reasonable attorney's fee as part of his case herein, to be fixed under the evidence in this case."

Plaintiff in error objects to this instruction, for the reason that the note did not specifically provide for a reasonable attorney's fee, but only contained a proviso that the maker agrees to pay all costs of collection. Plaintiff in error argues and cites numerous authorities to the effect that attorney's fees are not costs, and that attorney's fees provided for in a note are a part of the debt and are not costs of the action. We think the legal proposition stated by counsel for plaintiff in error is correct, but we are unable to apply such proposition to the case at bar. The words "costs of collection," used in the note sued on, are not necessarily confined to the costs which are charged up against the unsuccessful party to a case in court.

"The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed." Section 954, Revised Laws 1910.

Under this rule of construction the word, "costs," used in the note sued on, evidently is synonymous with "expense." To give it any other meaning would make the agreement in the note wholly useless, since the maker would be responsible for costs of suit without any agreement therefor being embodied in the note. The costs of collection, therefore, must be held to embrace attorney's fees and to include a reasonable compensation for the attorneys bringing suit in an endeavor to collect the note, since such attorney's fees are a part of the expenses of collection. 3 R. C. L. § 83, p. 895; Williams v. Flowers, 90 Ala. 136, 7 South. 439, 24 Am. St. Rep. 772; Montgomery v. Crossthwait, 90 Ala. 553, 8 South. 498, 12 L. R. A. 140, 24 Am. St. Rep. 832. The trial court did not err in giving the instruction complained of.

UNRECORDED CHATTEL MORTGAGE OF BANK STOCK.

Merchants' & Farmers' Bank v. Citizens' Bank, Supreme Court of Arkansas, July 3, 1916. 187 S. W. Rep. 650.

In 1912, one Harris, the owner of shares of stock in the defendant bank pledged the stock to one Henderson for a loan and delivered the stock to Henderson. Later in the same year, Harris became indebted to the plaintiff bank and executed to that bank an instrument transferring the stock as security with authority to redeem the stock from Henderson. This instrument was neither acknowledged nor recorded, but it was brought to the attention of the defendant bank and no objection was made to the transaction. In 1913, Harris became indebted to the defendant bank. In 1914, Henderson assigned the Harris note to the defendant bank and turned over the stock which he held as collateral. Under the laws of Arkansas a bank has a lien on its stock for all debts due it from the owner of the stock. It was held that this statutory lien of the defendant was superior to the claim of the plaintiff bank. The instrument executed to the plaintiff was merely a chattel mortgage. It was not a pledge because the stock was not delivered to the plaintiff. Inasmuch as the statute declares that a chattel mortgage does not become a lien until acknowledged or filed for record, the instrument executed in the plaintiff bank did not affect the statutory lien of the defendant ,which came into existence when Harris subsequently became indebted to it.

Appeal from Union Chancery Court; Jas. M. Barker, Chancellor.

Suit by the Citizens' Bank and others against the Merchants' & Farmers' Bank and others. Decree for plaintiffs, and defendants appeal. Reversed and remanded, with directions.

R. G. Harper and W. E. Patterson, both of El Dorado, for appellants. Mahony & Mahony, of El Dorado, and H. S. Powell, of Camden, for appellees.

McCULLOCH, C. J. Appellant Merchants' & Farmers' Bank is a banking corporation doing business at Junction City, Ark., and A. B. Henderson was its president at the time the transactions took place which are brought under review in this litigation. On January 3, 1912, C. A. Harris became indebted to A. B. Henderson in the sum of $5,500, and executed his note to Henderson for that amount, due and payable one year after date, with interest, and to secure the payment of the note, Harris executed to Henderson a mortgage conveying certain lands. Harris was the holder of certain shares of the capital stock of appellant corporation of the par value of $3,000, which he also pledged to Henderson as security for said note, and he delivered the certificates of shares to Henderson to hold. On that date, Harris entered into a contract with appellant to guarantee payment of a certain note, previously executed by the Harris Lumber Company (of which corporation Harris was the principal stockholder), for the sum of $1,000, and one of the issues of fact in the present case is whether or not Harris pledged the stock as security for that debt, as well for the debt to Henderson. Harris also transferred to Henderson certain other collaterals which are unnecessary

to mention in detail in disposing of the present controversy. The debt of Harris to Henderson had been paid down to the sum of $3,499.05 at the time of the beginning of the present litigation, and, in the meantime, Harris had become indebted to appellant in the sum of $2,644.93, for the payment of which debt appellant asserts its statutory lien on the Harris shares of stock. This indebtedness was incurred in the year 1913, and was subsequently evidenced by a note executed by Harris to appellant. On July 3, 1912, Harris became indebted to appellee Citizens' Bank of Junction City upon two promissory notes, each for the sum of $3,500, and he executed to appellee a second mortgage on the lands embraced in the prior mortgage to Henderson, as well as upon certain other lands. He also executed to appellee an instrument, whereby he transferred said shares of stock in appellant's bank to appellee, as security for said debt, with authority to redeem said shares of stock from the prior pledge to Henderson. That instrument was neither acknowledged nor recorded, but the evidence adduced by appellee tends to show that its existence was brought tc the attention of appellant's president and cashier, and that the latter offered no objections to the transaction. There is a conflict upon that issue; but, in view of the conclusions which we have reached decisive of the controversy, it is unnecessary to determine on which side of that issue the preponderance of the evidence lies. On December 14, 1914, Henderson assigned the Harris note to appellant bank, and delivered all the collaterals which Harris had placed in his hands to secure the debt. The present suit was instituted by appellee for the purpose of having the securities marshaled, and to compel appellant to resort, for the satisfaction of the original debt of Harris to Henderson, to securities other than the bank stock. The contention of appellee is that its lien on the stock is superior to the statutory lien asserted by appellant. On the final hearing of the case, the chancellor decided in favor of appellee as to the priority of the asserted liens on the stock. There are other questions presented here; but, since we reached a conclusion favorable to appellant on the question of priority of liens on the stock, all other questions are eliminated from the case.

The lien of the appellant corporation upon the shares of its own stock is declared in the following statute (section 853, Kirby's Digest):

"The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation in such form as the directors shall prescribe; and such corporation shall at all times have a lien upon all the stock or property of its members invested therein for all debts due from them to such corporation."

Whether this lien has priority over a pledge to a third party, with notice to the officers of a corporation, we need not decide. The cases cited by counsel for appellee on the brief tend to support their contention that the statutory lien of a corporation is subordinate to a lien of a prior pledge of the stock. It was so decided by the United States Circuit Court of Appeals of this circuit in an opinion by Judge Thayer, in the

case of Curtice v. Crawford County Bank, 118 Fed. 390, 56 C. C. A. 174, adjudicating the effect of a transaction which arose in Arkansas under the statute. The question has never been decided by this court, but was mentioned by Judge Riddick in delivering the opinion in Springfield Wagon Co. v. Bank of Batesville, 68 Ark. 234, 57 S. W. 257, the decision on that question, however, being expressly pretermitted. Nor was that question decided in the recent case of Young Coal Co. v. Hill, 112 Ark. 180, 165 S. W. 292. The transaction between Harris and appellee did not constitute a pledge of the stock, for there was lacking one of the essential elements of a pledge; *i.e.*, manual delivery of the certificate of stock. "Possession of the property is of the very essence of a pledge," said this court in Lee Wilson & Co. v. Crittenden County Bank, 98 Ark. 384, 135 S. W. 885, "and without such possession in the pledgee, there can be no privilege thereunder as against third persons."

The instrument executed by Harris to appellee amounted to nothing more than a mortgage, which was not recorded, and was therefore only good between the parties. 31 Cyc. 807. It did not affect the rights of third parties, and therefore the statutory lien of appellant which arose when the debt was subsequently incurred cannot be subordinated to it. The statute itself declares that a mortgage shall not become a lien until it has been duly acknowledged and filed for record. Kirby's Digest, § 5396. This court has repeatedly held that an unrecorded mortgage is without any effect against strangers to it, and is only good between the parties.

It is contended that appellant waived its lien, but we find in the record no evidence of conduct on the part of the bank which would constitute a waiver. All that is shown with reference to appellant's connection with the transaction between appellee and Harris was that Harris called attention of the cashier and the president of the appellant bank to the fact that he was going to give the Citizens' Bank a second pledge of the stock, and those officers made no objection thereto. This was far from constituting a waiver by estoppel. If an actual pledge of the stock was effectual against the lien of the bank, it was unnecessary to obtain the consent of the officials of the corporation. Notice of the pledge would alone have been sufficient. Mere knowledge on the part of appellant's officers that there had been an effort to create a lien on the stock in favor of appellee was not sufficient to work an estoppel, and unless appellee's lien was made complete by manual delivery of the stock, or by acknowledgment and recording of the mortgage, so as to comply with the registration laws, it had no force against appellant when its statutory lien subsequently attached.

We are of the opinion, therefore, that the chancellor erred in declaring appellee's lien on the stock to be prior to that of appellant. The decree is reversed, and the cause is remanded, with directions to enter a decree in appellant's favor in accordance with this opinion.

WHEN CERTIFICATE OF DEPOSIT OUTLAWED.

Baxley Banking Co. v. Gaskins, Supreme Court of Georgia, July 13, 1916. 89 S. E. Rep. 516.

The statute of limitations does not begin to run against a certificate of deposit payable "twelve months after date on return of this certificate properly indorsed" and providing that interest shall cease at maturity, until the certificate is returned to the bank properly indorsed and payment thereof demanded.

Error from Superior Court, Telfair County; E. D. Graham, Judge.

Action by Daniel Gaskins, Sr., executor, against the Baxley Banking Company. Judgement for plaintiff, and defendant brings error. Affirmed.

J. M. Swain, Jr., and J. C. Bennett, both of Hazlehurst, for plaintiff in error. L. E. Heath, of Douglas, for defendant in error.

HILL, J. Daniel Gaskins, Sr., as executor of the last will and testament of William Hinson, brought suit, on May 16, 1914, against the Baxley Banking Company upon a time certificate of deposit issued by the bank, a copy of which is as follows:

"Telfair County Bank (Branch Baxley Banking Co.) $1,000. Lumber City, Ga. Jan. 25, 1905. This certifies that estate of Wm. Hinson has deposited in this bank $1,000, payable to the order of the administrator, 12 months after date, on return of this certificate, properly indorsed, with interest at the rate of 6 per cent. per annum. Interest will cease at maturity. Not subject to check. J. A. Doster, Cashier,"

It is alleged in the petition, that on July 7, 1913, the day when the plaintiff qualified as executor, he indorsed the certificate of deposit as executor, and demanded payment of the bank of the trust fund and money represented by the time certificate, and the bank refused and still refuses to pay. That the certificate of deposit was never presented and the money demanded by any one authorized until it was presented by petitioner on July 7, 1913; and that it had never been paid. Judgment was prayed for the amount stated in the certificate of deposit, with interest. The defendant filed its demurrer on the grounds that the petition failed to set out a cause of action, and that the debt declared on was barred by the statute of limitations. The judge overruled the demurrer, and the defendant excepted.

Does the language of the certificate of deposit, properly construed, make it due 12 months after its date? If it does, the suit brought in 1914, 9 years after its date, would be barred by the statute of limitations. It is plain that the money could not be withdrawn under 12 months from the date of the certificate. It is also clear that the interest ceased after 12 months. When, then, is the certificate payable? It is not due before the "return of the certificate, properly indorsed" at any time.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §437, 438.

It might be payable 12 months after date, on return of the certificate properly indorsed, or subsequently. The certificate was not returned properly indorsed, and a demand made for the money, 12 months after date, and not until July 7, 1913.

In the case of Hillsinger v. Georgia Railroad Bank, 108 Ga. 357, 33 S. E. 985, 75 Am. St. Rep. 42, this court held that:

"A certificate of deposit issued by a bank, and payable to the order of the depositor 'on return of this certificate properly indorsed,' is not due, until payment thereof is actually demanded."

In delivering the opinion of the court, Lumpkin, P. J., in speaking of the language of the certificate above quoted said:

"We think their plain meaning is that the paper itself must be brought back to the bank and a demand made for the money; and we know this view concurs with the common course of business in such matters. It is not contemplated, when a depositor places money in a bank and takes a certificate of this character, that the officials of the bank are to seek him out and make payment to him, but that he, or his indorsee, when payment is desired, will bring the certificate to the bank and ask for the money."

And see, to the same effect, the cases of Patterson v. Blanchard, 98 Ga. 518, 25 S. E. 572; Munnerlyn v. Augusta Savings Bank, 88 Ga. 333 (3), 336, 14 S. E. 554, 30 Am. St. Rep. 159.

The only difficulty we have in reaching the conclusion that the certificate of deposit in the present case is not due until a demand for payment is actually made on the return of the certificate, properly indorsed, arises from the sentence "Interest will cease at maturity." At maturity of what? The word "maturity" is somewhat confusing and at variance with the view above expressed. But the certificate must be construed as a whole, and not on one isolated sentence; and, so construing it, we think the better view is to hold, under the decisions above cited, that the certificate does not become due until it is returned to the bank properly indorsed, and a demand is actually made for payment. In this view the certificate was not due until the demand for payment was made on July 7, 1913, and the statute of limitations would begin to run only from that date, and not from 12 months after the date of the certificate. And that being so, the certificate was not barred by the statute of limitations at the date of bringing the suit, May 16, 1914; and the court properly overruled the demurrer. It may be added that the word "maturity," as used in the certificate, refers only to the stopping of interest at the expiration of 12 months from the date of the certificate—maturity of the date on which the certificate would cease to draw interest. If the plaintiff is entitled to recover the amount of the certificate, he would be entitled to recover interest at 7 per cent. from the date of demand for payment and refusal to pay.

Judgment affirmed. All the Justices concur.

JOINT DEPOSIT.

In re Missionary Society, New York Surrogate's Court, April, 1916. 160 N. Y. Supp. 512

Where a savings bank account was opened in the names of a husband and wife and there was no evidence as to the ownership at the time of the deposit or as to any agreement that it was to be jointly or otherwise owned, it was held that up the death of the husband, the wife was entitled to the entire deposit.

Application by the Missionary Society of the Most Holy Redeemer in the State of New York for an order directing Grace Roarty and another to make and file their account as administrators of Annie Maguire, also known as Anna Maguire, as to her proceedings as executrix of the last will and testament of John Maguire, deceased. Account approved as made.

Ernest P. Seelman, of New York City, for administrators.

Lewis S. Goebel, of New York City (George V. Grainger, of New York City, of counsel), for objector.

W. J. O'Donnell, of New York City, for next of kin of Annie E. Maguire.

KETCHAM, S. The savings bank accounts which are the subject of controversy were opened in the names of husband and wife, without evidence in the style of the account, unless it is found in the names themselves, or in any other form, of an agreement or intention that the deposits were jointly owned or that either party to the accounts should take by survivorship. There is no proof as to the ownership of the deposited funds, or any part thereof, at the time of the deposits.

It was once regarded as settled law that under such circumstances it was to be presumed that each of the parties to the transaction owned one-half of the fund individually, that the deposit was the subject of common, and not joint, ownership, and that there was no agreement or purpose that either should take upon the death of the other.

While the decisions in this regard had a firm, but narrow, basis in the rules affecting ownership in common, they took little heed of the common sense—popular conception—that such deposits would ordinarily not be made, except with the intent that upon the death of one of the parties the other should take the whole fund. It may well be asserted that in any case where, in obedience to rules unknown to the laity, a deposit of this sort was held to be in common and not subject to survivorship, the wish and understanding of the unlearned parties was disappointed.

There are signs of retreat in the recent opinions on this subject. In Matter of Thompson, 167 App. Div. 356, 153 N. Y. Supp. 164, the Appellate Division of the First Department held that deposits in no respect different from the transactions involved in the case at bar were intended to belong to the wife upon the death of the husband. The court says:

"At the death of the decedent $12,830.82 was on deposit in various

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §175.

banks in accounts entitled 'Alexander Thompson or Mary E. Thompson.' The surrogate held that inasmuch as the evidence did not show how much of the deposits belonged to the decedent and how much to his wife, it would be presumed one-half belonged to each. In reaching this conclusion we think he erred."

While the opinion cited does not treat of the cases expressly contrary to the result therein reached, and is content with stating only cases in which it was known that the moneys deposited were wholly owned by the husband and were deposited by himself, the holding itself cannot be misunderstood.

The accompanying decision of the same Appellate Division, in Matter of Dalsimer, 167 App. Div. 367, 153 N.Y. Supp. 164, was addressed to a transaction in which the parties, however they held the funds involved, made profuse and inevitable evidence of their intent and agreement that their investment should be joint and not common, should vest in each an immediate "unity of interest, unity of title, unity of time, and unity of possession," and should, upon the death of one, be the property of the other by an ownership instituted at the time of the investment. That case is of no present avail.

The authority of the Thompson Case, supra, in the Appellate Division was still subordinate to the explicit judgment of the Court of Appeals in Matter of Albrecht, 136 N. Y. 91, 32 N. E. 632, 18 L. R. A. 329, 32 Am. St. Rep. 700, and Matter of Kaupper, 201 N. Y. 534, 94 N. E. 1095, affirming 141 App. Div. 54, 125 N. Y. Supp. 878, as well as the equally plain rulings of Wetherow v. Lord, 41 App. Div. 413, 58 N. Y. Supp. 778, and Matter of Wilkens, 144 App. Div. 803, 129 N. Y. Supp. 600, but the case has been affirmed without question of the views upon which the result was based. 217 N. Y. 609. The decision has been regarded by Mr. Surrogate Schulz as authority for his own ruling, as follows:

"The fact that the bond, mortgage, and certificate of deposit were taken in the names of the husband and wife, in the absence of evidence to the contrary, shows an intention to create in the wife the right of survivorship." Matter of Keil, 91 Misc. Rep. 667, 155 N. Y. Supp. 824.

It follows that the deposits in question belonged to the wife and formed no part of the estate of the husband intestate. The account must be approved as made.

Decreed accordingly.

EFFECT OF EXTENSION OF TIME.

Cleveland National Bank v. Bickel, Supreme Court of Oklahoma, July 11, 1916. 159 Pac. Rep. 302.

One who signs a promissory note as joint maker, although in fact signing as surety for his co-maker, is liable as a maker, although the capacity in which he signed was known to the payee. He is not discharged by extension of time granted without his consent to this co-maker.

Commissioners' Opinion, Division No. 2. Appeal from County Court, Pawnee County; Geo. E. Merritt, Judge.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §475.

Action by the Cleveland National Bank against A. F. Bickel and another. Judgment for plaintiffs against defendant Bickel, and judgment for defendant W. H. A. Williams, and the Bank appeals. Reversed as to defendant Williams, with directions to set aside judgment in his favor, and to render judgment for the bank against him.

Blake & Hazlett, of Cleveland, for plaintiff in error.

BURFORD, C. This was an action on a promissory note executed after the passage of the Negotiable Instruments Act in this state. The note was signed by A. F. Bickel and W. H. A. Williams as principals. There was nothing on the face of the note to indicate that either was a surety. Each defendant answered, setting up that the note had been paid by the taking of a subsequent note and mortgage from a party by the name of Wilson. Williams, in addition, answered that he was a surety on the note. At the trial the court, to whom the case was tried without the intervention of a jury, found that the note and mortgage was taken from Wilson, the third party, not in payment of the original obligation, but as collateral security thereto. He held, however, that the surety, Williams, was discharged. Apparently this holding was based upon the fact that the note taken from Wilson became due after the maturity of the original obligation which it was taken to secure, from which the court concluded that the time of payment of the original obligation was necessarily extended until the maturity of the collateral note, and that this extension having been made without Williams' consent operated to release him. Even under the old act this conclusion was wrong. See Randolph on Commercial Paper (2d Ed.) 961; U. S. v. Hodge, 6 How. 279, 12 L. Ed. 437; Roberson v. Blevins, 57 Kan. 50, 45 Pac. 63; Watauga Bank v. Matson, 99 Tenn. 390, 41 S. W. 1062; 7 Cyc. 894, and cases cited. There was no proof of any agreement to extend, except such as might be drawn from the due date of the collateral.

The controlling proposition in the case, however, seems to be that as Williams signed as principal, and regardless of whether or not he was actually a surety, or whether or not that fact was known to the payee, he could be discharged only in the manner provided in article 9 of the Negotiable Instruments Act, being sections 4169-4175, Rev. L. 1910. In the act the causes for which a principal may be discharged are enumerated, but extension of time to a joint maker is not one of them. An extension of time to the maker not being enumerated as one of the causes which discharge a joint principal, the maxim "expressio unius exclusio alterius" applies, and such a plea cannot be sustained. This construction of these provisions of the act has apparently been uniform in all the cases which have considered them. These cases are collected in the notes to Vanderford v. Farmers' & Mechanics' National Bank, 105 Md. 164, 66 Atl. 47, as reported in 10 L. R. A. (N. S.) 129, and Richards v. Market Exchange Bank, 81 Ohio St. 348, 90 N. E. 1000, as reported in 26 L. R. A. (N. S.) 99. The trial court was therefore in error in discharging the defendant Williams, in view of his finding of fact that this Wilson note was taken as security rather than as payment.

The cause is reversed as to defendant Williams, with directions to the trial court to set aside his judgment in favor of the defendant Williams, and against the plaintiff bank, and to render judgment in favor of the Cleveland National Bank against W. H. A. Williams in the proper amount.

PER CURIAM. Adopted in whole.

CONSTRUCTION OF INDORSEMENT.

Copeland v. Burke, Supreme Court of Oklahoma, July 27, 1916. 158 Pac. Rep. 1162.

An indorsement on a note written in the following words—"I transfer my right, title and interest in the same," is not a qualified indorsement but is an ordinary indorsement and does not limit the liability of the indorser.

Action by J. A. Copeland against J. M. Burke and another. Judgment for defendants, and plaintiff brings error. Reversed.

Walter, Hilpirt & Callihan and W. J. Weaver, all of Oklahoma City, for plaintiff in error. Bennett & Pope, of Oklahoma City, for defendants in error.

EDWARDS, C. The parties will be referred to as plaintiff and defendant, according to their positions in the lower court. The plaintiff sued the defendant and one E. S. Messengill in the district court upon a negotiable promissory note executed by said Messengill to the defendant, J. M. Burke, payee, and by the said defendant transferred to the plaintiff by memorandum upon the back of the note in these words,"I transfer my right, title and interest in same. J. M. Burke." The petition is in the ordinary form, alleging the making of the note, its transfer for a valuable consideration before maturity, with a copy of the note and indorsement thereon attached. The defendant Burke demurred, assigning the reason that the petition did not constitute a cause of action against him. The demurrer was sustained. The plaintiff elected to stand upon his petition. Judgment was thereupon rendered for defendant for costs, and the plaintiff appeals.

The only assignment of error is that the court erred in sustaining the demurrer of defendant to the petition of plaintiff.

The case must be determined by the meaning and effect to be given the words preceding the signature of the defendant upon the back of the note in controversy. Do the words used constitute the defendant an indorser in due course, and as such liable for the payment of the note, or, is he a mere assignor? Sections 4088 and 4113, Revised Laws 1910, with references to qualified indorsement, read as follows:

"Qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words 'Without recourse,' or any words of similar import.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §233.

Such an indorsement does not impair the negotiable character of the instrument."

"A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicated by appropriate words his intention to be bound in some other capacity."

It will be seen that a special indorsement does not destroy the negotiability of a note, and the question of negotiability does not enter into the case. There are two widely divergent lines of authority in cases of this kind, one line holding that a memorandum of similar import to that here used exempts the indorser from personal liability or constitutes him a mere assignor. One of the leading cases sustaining this line of holding is Hailey v. Falconer, 32 Ala. 536, in which it is held that an indorsement in these words:

"For value received this 28th day of February, 1850, I transfer unto John P. Hailey all my right and title in the within note, to be enjoyed in the same manner as may have been by me"

—exempts the indorser from personal liability on the note. Another authority, strongly sustaining this line, is Spencer v. Halpern, 62 Ark. 595, 37 S. W. 711, 36 L. R. A. 120, the indorsement in that case being in these words:

"For value received, I hereby transfer my interest in the within note to Isaac Halpern, Geo. Spencer"

—the court in the course of the opinion saying:

"Had the payee intended to be bound as indorser, why use so many words? Had the transferee expected more than 'the interest' of the transferor, why did he accept the instrument transferring only his interest? We must accept and interpret the completed contract as the parties made it. They have been proper to express it at length, and have used unambiguous terms. Construing the terms, 'my interest,' most strongly against the transferor, we do not feel authorized to say they mean anything more than simply 'my interest.' "

The court in this case adopts the maxim, "Expressio unius est exclusio alterius," and rejects the maxim, "Expressio eorum quae tacite insunt nihil operatur." This line is further sustained by Tiedeman on Commercial Paper, 265:

"The declaration that the payee assigns or transfers all his right, title and interest in the paper would seem to limit in a most effective way the right acquired by the transferee to those which the transferor had therein, and thus prevent the writing from operating as an indorsement."

The other line of authority is to the effect that an indorser, in order to limit his personal liability, must do so by words clearly expressing such intent. Some of the decisions sustaining this line are as follows: The early English case of Richards v. Franklin, 9 Car. & P. 221, cited by Mr. Tiedeman, in which the indorsement was in these words:

"I hereby assign this draft and all benefit of the money secured thereby to John Grainger of Bessilsleigh, in the county of Berks, laborer; and order the within named Thomas Fox Hitchcock to pay him the amount and all interest in respect thereof"

—which was held to be merely an ordinary indorsement. Daniel on Negotiable Instruments, §688c, reads:

"The question arising in such cases is a nice one, and depends upon rules of legal interpretation. The mere signature of the payee, indorsed on the paper, imports an executed contract of assignment, with its implications, and also an executory contract of conditional liability, with its implications. The assignment would be as complete by the mere signature as with the words of assignment written over it. The conditional liability which is executory is implied by the executed contract of assignment and the signature under it, which carries the legal title; and the question is, Does the writing over a signature of an express assignment, which the law imports from the signature per se, exclude and negative the idea of conditional liability, which the law also imports if such assignment were not expressed in full? We think not. * * * When the thing done creates the implication of another to be done, we cannot think that the mere expression of the former in full can be regarded as excluding its consequences, when that consequence would follow if the expression were omitted."

The most often cited authority is the case of Sears v. Lantz & Bates et al., 47 Iowa, 658, in which the indorsement was in these words:

"December 18th, 1876, I hereby assign all my right and title to Louis Meckley. John Bowman"

—which the court held to be equivalent to an indorsement of the note, and bound the assignor as an indorser, the court following the earlier case of Sans v. Wood, 1 Iowa, 263, in which the same holding was made upon an indorsement in these words, "I assign the within note to Miss Sarah Coffin." The same holding is made in the case of Adams v. Blethen, 66 Me. 19, 22 Am. Rep. 547, upon a similar indorsement. In the case of Citizens' National Bank v. Walton, 96, Va. 435, 31 S. E. 890, the court holds:

"Writing on back of negotiable note, signed by one of its two payees, 'For value received, I hereby assign and transfer to F. all right, title, and interest that I may have in the within note,' renders him liable to an innocent holder as an indorser, and not as an assignor, and without regard to the equities between him and the other payee, though F. be such payee."

In the case of Markey v. Corey, 108 Mich. 184, 66 N. W. 493, 36 L. R. A. 117, 62 Am. St. Rep. 698, it is held:

"The negotiability of a promissory note is not destroyed because of an indorsement thereon that it is given in accordance with a certain contract, although the note is one of a series which, by the terms of such contract, were to become payable, at the option of the payee, on failure to pay any of them."

The court in this case follows the Iowa cases above referred to, and says:

"The usual mode of transfer of a promissory note is by simply writing the indorser's name upon the back, or by writing also over it, the direction to pay the indorsee named, or order, or to him or bearer. An indorsement, however, may be made in large terms and the indorser be held liable as such."

The Supreme Court of Minnesota, in the case of Maine Trust & Bank-

ing Co. v. Patrick J. Butler, 45 Min. 506, 48 N. W. 333, 12 L.R. A. 370, in a well-reasoned case, follows the doctrine laid down in Daniel on Negotiable Instruments, and cites with approval the Iowa and Maine cases above referred to, and adopts the latter maximum referred to by the Arkansas Court in the case of Spenser v. Halpern, supra. In the case considered by the Minnesota court the indorsement was in these words.

"For value received I hereby assign and transfer the within note, together with all interest in and all rights under the mortgage securing the same, to L. D. Cooke"

—and the court held that this was not a qualified indorsement, and that the payee was liable as an ordinary indorser.

This question not having heretofore been presented to this court, we feel constrained to adopt the construction placed upon the indorsements of this character by the last-cited line of authorities, as supported by the better reasoning and more in consonance with the commercial needs of the day. In these modern times commercial paper has come to play a very large part in the business life of the country. Commerce is carried on by means of business credit. Commercial paper in great volume continuously passes current by indorsement. The effect of and the liability incurred by an indorsement is a matter of common knowledge. The phrase, "without recourse," as employed in such business transactions, is in everyday use, and we can hardly conceive of a person engaged in business affairs of importance, as was the defendant in this case, who is not familiar with its use and meaning. If the defendant did not intend to be bound by his indorsement on the note in question, he should have used some words which would clearly indicate that he was not an ordinary indorser. The very terms of our statute (section 4088, Revised Laws 1910), supra, specifies that the indorsement may be qualified by the use of the words, "without recourse," or words of similar import. In our judgment the defendant has not so qualified his indorsement and is liable.

It follows that the judgment must be reversed.

PER CURIAM. Adopted in whole.

BONDS ISSUED AT ILLEGAL REDUCTION.

In re Valecia Condensed Milk Co., U. S. District Court, Western District of Wisconsin, April 19, 1916. 233 Fed. Rep. 173.

Under the statutes of Wisconsin it is provided that no corporation shall issue bonds except for money or property estimated at its true money value equal to 75% of the par value of the bonds and that all bonds issued contrary to this provision shall be void. It was held that bonds issued at less than the figure stated in the statute were void in the hands of the holder, notwithstanding that such holder had no knowledge of the violation of the law.

In Bankruptcy. In the matter of the bankruptcy of the Valecia Condensed Milk Company. On review of proceedings before referee to

determine the validity of bonds held by the National Bank of La Crosse. Order of referee affirmed.

Frank Winter, of La Crosse, Wis., for petitioners.

Sanborn & Blake, of Madison, Wis., for receivers.

Richmond, Jackman & Swansen, of Madison, Wis., for claimants.

GEIGER, District Judge. That the referee acquired jurisdiction to pass upon the validity of the bonds held by the bank does not, it seems to me, admit of serious controversy. The power to determine the extent, character, or validity of claims or liens asserted against property in the hands of the bankruptcy court is necessarily broad; and when the trustee filed a petition upon which creditors claiming to hold liens were required to come in, to the end that the court determine whether the property be sold subject to or freed from liens, such broad jurisdiction not only attached against the bank, but was acceded to, because a statement of the nature of its claim was thereupon made; and subsequently, when the trustee, doubtless as a foundation for and an aid in discharging its duty to make distribution of the sale proceeds, filed a further petition, the bank again appeared, and throughout litigated with the trustee the one question respecting the validity of the bonds held by it. The determination of that question was therefore properly before the referee.

The one question is: Are the bonds valid? Section 1753 of the Wisconsin Statutes, as construed in the Pfister Case, 83 Wis. 86, 53 N. W. 27, the Waukesha Canning Case, 211 Fed. 927, 128 C. C. A. 305, and the Oconto Water Case (C. C.) 52 Fed. 29, has not been impaired or repealed by the Negotiable Instruments Act (Laws 1899, c. 356), as suggested by counsel for the bank; nor has the recent ruling of the Court of Appeals for this circuit, in connection with the Carey & Guyon bonds, growing out of the present bankruptcy (229 Fed. 698), had any such result; and I know of no authority to justify the contention that, as between a corporation bond obligor and its obligee, full effect must not be given to the requirements that 75 per cent. of par be exacted upon issue.

The facts, practically without dispute, fail to show compliance with the statute; and the order of the referee must be affirmed, unless the rule above can justifiably be departed from. Counsel strongly urge In re Progressive Wall Paper Co. (D. C.) 224 Fed. 143, in support of the suggestion that, because the bank loaned an amount equal to the face of the pledged bonds, or because it has offered in these proceedings to diminish its right to a 75 per cent. basis, the court should validate them accordingly. The lengthy opinion in that case comments on the Waukesha Canning Case thus:

" * * There was no express contract or agreement by the pledgees that they would accept the bonds as collateral and account therefor at 75 per cent. of their par value, or not dispose of same at a less sum. But the court held that such an agreement was implied from the fact that the pledgees knew that, to validate the issue, they must be taken, if at all, at not less than 75 per cent. of their par value. The court therefore

held that this was the understanding of the parties, and that the issue of the bonds * * * was legal and valid."

The opinion then adds:

"In the case at bar it is presumed that the bank knew the law, and that there was no intent or purpose to violate it."

The court then directs:

"It follows that the order of the referee holding the bonds invalid, and void in the hands of the bank, should be reversed, and that the injunction against a sale or disposition thereof should be modified, so as to provide that the bank is enjoined and restrained from disposing of the same at less than their par value. The notice that the bonds will be sold by the bank contains no such limitation or qualification. If the bank will file a stipulation that it will not sell or undertake to sell or dispose of these bonds for less than their par value, and stating that such agreement was a part of the contract of pledge, there may be an order reversing the order of the referee now under review. This will clear the situation and leave the bank free to act in the premises. Should the bank then violate the agreement or contract of pledge as thus made definite and certain, it would be answerable to the referee in bankruptcy for any loss the estate represented by him might sustain."

The Waukesha Canning Case, while it may take an extreme view of the facts there presented, does not, in my judgment, justify doing what was finally done in this Wall Paper Corporation Case, and what the bank now asks in the present case. The violation of this law, or the fact of noncompliance with its provisions, is the only issue. If presumption or proof of a bondholder's knowledge of the law, and like presumption that he did not intend to violate it, will absolve him from the consequences of a violation in fact, then the law becomes inoperative, except as to those who may be shown to have been wholly ignorant of its terms. Irrelevant protestations of knowledge of the law, of honesty of purpose and the absence of intent, override noncompliance and violation in fact, by granting a sort of privilege of nunc pro tunc validation. I am unwilling to adopt the suggestions contained in that case.

The order of the referee is affirmed.

NOTE.—Since preparation and filing of the foregoing memorandum, I observe that the ruling in Re Progressive Wall Paper Corporations, 224 Fed. 143, referred to, has been reversed. See 229 Fed. 489,— C. C. A.—

CERTIFICATE OF DEPOSIT ISSUED WITHOUT CONSIDERATION.

National City Bank of Seattle v. Titlow, U. S. District Court, Washington, February 16, 1916. 233 Fed. Rep. 838.

A bank which certifies a check, though the depositor is without funds, is not liable to any one, save a bona fide holder for value; and that rule applies where a bank issues a certificate of deposit, though no deposit has been made.

In Equity. Suit by the National City Bank of Seattle against A. R.

Titlow, receiver of the United States National Bank of Centralia. Decree for defendant.

Herr, Bayley & Wilson, of Seattle, Wash., for plaintiff.

Robert P. Oldham and Robert C. Goodale, both of Seattle, Wash., for defendant.

NETERER, District Judge. Plaintiff has commenced an action against the defendant receiver, in which it alleges, in substance: That on the 8th of July, 1914, the United States National Bank, of which the defendant is the receiver, issued to Winkleman Bag Company a certificate of deposit as follows: "Winkleman Bag Company has deposited in this bank $3,000.00, payable to the order of ourselves, on return of this certificate properly indorsed," That on the back of the certificate was indorsed: "On or after October 8, 1914, pay to the order of the National City Bank of Seattle, Washington. [Signed] Winkleman Bag Company, by R, Winkleman." And it alleges: That the words "to the order of ourselves" were understood between the United States National Bank and Winkleman Bag Company to mean that the certificate was to be payable to the order of Winkleman Bag Company, and that such was the intention and agreement of the parties, and states that for value this certificate was negotiated on July 9th to the plaintiff, who paid in good faith a valuable consideration. That the United States National Bank became insolvent, and the defendant was appointed receiver. That claim was made to the receiver and rejected. And it asks that the certificate be reformed or corrected, so as to have the word "ourselves" changed to the word "themselves," and then asks that it be allowed as a claim against the insolvent bank and permitted to participate in dividends.

The defendant admits the issuance of the certificate, denies there was any mistake, and makes some affirmative defenses, in which it states that at the time the Winkleman Bag Company was indebted to the United States National Bank in a sum greater than the amount named in the certificate, and that the certificate was issued without any consideration, etc.

The plaintiff replies, taking issue with the affirmative matters of the answer.

Upon the trial it appeared that on and prior to July 8, 1914, the Winkleman Bag Company was indebted to the United States National Bank in the sum of $20,000 for money loaned and on letters of credit for $75,000, and had an overdraft of something over $4,000. On June 8th Winkleman Bag Company desired to purchase some burlap from a client of the plaintiff bank. Winkleman Bag Company was a client of the United States National Bank, as already appears. On this day the insolvent bank asked the plaintiff bank to carry the Winkleman Bag Company for 90 days on the burlap which it was negotiating to buy from a client of the plaintiff bank, saying: "We will see that it is paid promptly when due." This letter evoked conversation by phone between the officers of the banks; the plaintiff bank stating that it would carry the

obligation upon the credit of the insolvent bank, and that if the insolvent bank issued its certificate of deposit it would carry it for the time named. On June 23d the plaintiff bank answered by letter, saying that the matter was satisfactorily arranged, and further said: "We are carrying the account along the line of your letter." On July 8th the insolvent bank issued the certificate of deposit above mentioned, and on July 9th Winkleman Bag Company forwarded this certificate of deposit to the plaintiff bank, with indorsement upon it as above indicated, together with a check for $60, interest upon the certificate of deposit for 90 days. The Winkleman Bag Company had not in fact deposited any money for the certificate of deposit, but had promised to pay such sum into the bank before the expiration of 90 days, and had promised to secure this by bills of lading with draft attached for portions of the burlap which was being purchased, assigning such bills of lading and draft to the bank.

The only issue in this case is: Was the plaintiff a holder in due course? A certificate of deposit is properly held a negotiable instrument (Miller v. Austen, 13 How. [54 U. S.] 218, 14 L. Ed. 119); and the rights of plaintiff must be determined by the Negotiable Instrument Act of Washington. Section 3443, Remington & Ballinger's Code Wash., a part of such act, provides that:

"A holder in due course is a holder who has taken the instrument under the following conditions: First, That it is complete and regular upon its face. * * * Fourth. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it."

And section 3574, supra:

"* * * Where a note is drawn to the maker's own order, it is not complete until indorsed by him."

I think, from the evidence in this case, that the plaintiff must be held to notice of the infirmity of the instrument. While it appears regular on its face, it was not complete within these statutory provisions, because it was not indorsed by the maker, and therefore not taken in due course of business. Section 3440, Rem. & Bal. Code Wash.; Central Trust Co. v. First Nat. Bank, 101 U. S. 68, 25 L. Ed. 876; Goshen Nat. Bank v. Bingham, 118 N. Y. 349, 23 N. E. 180, 7 L. R. A. 595, 16 Am. St. Rep. 765; Lancaster Nat. Bank v. Taylor, 100 Mass. 18, 1 Am. Rep. 71, 97 Am. Dec. 70; Hughes & Co. v. Flint, 61 Wash. 460, 112 Pac. 633. The plaintiff also knew that it was the intention of the insolvent bank to become surety for the Winkleman Bag Company. The letter and all the conversations in testimony indicate that, and that act was ultra vires. Morse on Banks and Banking, § 65; Commercial Nat. Bank v. Pirie, 82 Fed. 799, 27 C. C. A. 171; Bowen v. Needles Nat. Bank, 94 Fed. 925, 36 C. C. A. 553. The issuance of the certificate was a method adopted to meet the exigency and the certificate being issued to "ourselves," and the indorsement of Winkleman Bag Company, "Pay on or after October 8, 1914," strongly emphasizes the situation, notwithstanding the Gilchrist testimony, with which the plaintiff bank, under the circumstances, is charged to know at its peril that the deposit was

actually made or secured. I am satisfied the plaintiff bank acted in good faith and was misled; but it had such knowledge of the transaction which, with the manner in which the certificate was issued and the indorsement by Winkleman Bag Company, does not show it a holder in due course. Washington Finance Corporation v. Glass, 74 Wash. 653, 134 Pac. 480, 46 L. R. A. (N. S.) 1043; Chaflin v. Farmers' & Citizens' Bank, 25 N. Y. 293; Bowen v. Needles Nat. Bank, supra. It has been repeatedly held that a bank certifying a check without funds is not liable thereon, except to a bona fide holder for value. Bowen v. Needles Nat. Bank (C. C.) 87 Fed. 430, affirmed 94 Fed. 925, 36 C. C. A. 553. The plaintiff does not stand in any stronger position than the Winkleman Bag Company, and the fact that the certificate was issued without consideration must defeat the plaintiff.

Decree for defendant.

WAIVER OF EXTENSION.

Pioneer Construction Co. v. First State Bank, Supreme Court of Oklahoma, November 16, 1915. Re-hearing denied July 6, 1916. 158 Pac. Rep. 894.

Where a note contains a stipulation that all defenses on the ground of any extension of the time of payment are waived, the use of the word "any" before "extension" indicates that one or more extensions of time of payment were contemplated.

Commissioners' Opinion, Division No. 3. Error from Superior Court, Oklahoma County; Edward Dewes Oldfield, Judge.

Action by the First State Bank against the Pioneer Construction Company and another. Judgment for plaintiff. Affirmed.

RITTENHOUSE, C. On October 23, 1908, the Pioneer Construction Company and N. S. Sherman made, executed, and delivered their certain promissory note for $500 to the First State Bank of Oklahoma City, which note contained the following clause:

"The indorsers, guarantors, and assignors severally waive presentment for payment, protest, and notice of protest for nonpayment of this note, and all defense on the ground of any extension of time of its payment that may be given by the holder or holders, them or either of them, or to the makers thereof,"

Under this clause the bank made several extensions of the time of payment without the consent of N. S. Sherman, who claimed to have signed the note as surety, and the sole question presented for our consideration arises upon that issue. It is contended that the words "any extension", mean only one extension. In this we cannot agree. The use of the word "any" before "extension" indicates that one or more extensions of the time of payment was contemplated by the parties. The word "any" was defined in Re Appeal of McNeal, 35 Okl. 17, 128 Pac. 285, wherein this court in doing so adopted the definition given by Webster's

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §476.

New International Dictionary, "one indifferently out of a number," and, as explained by that authority, "as applied to individuals, 'any' was formerly (and in dialect English is still) used pronominally for one of two, but in educated usage any and any one are now applied only to one of three or more; either and neither being used in referring to one of two." Applying this definition to the facts in the case at bar, we find that the word "any" preceding "extension" would mean that N. S. Sherman waived all defenses to the note on the grounds of any number of extensions of the time of payment. In the case of Winnebago County State Bank v. Hustel, 119 Iowa 115, 93 N. W. 70, it was held that:

"Where a note contained a stipulation that all defenses on the ground of any extension of the time for payment was waived, the use of the word 'any' before 'extension' indicated that any one of an indefinite number of extensions was intended."

We therefore conclude that more than one extension might be allowed, and the defense to each extension was by the terms of the note waived.

DRAWING CHECK AGAINST INSUFFICIENT FUNDS.

People v. Weir, California District Court of Appeals, June 15, 1916. 159 Pac. Rep. 442.

In order to convict a person of issuing a check against insufficient funds wilfully and with intent to defraud, criminal intent must be shown It is not necessary, however, to prove that the check was presented to the bank.

Appeal from Superior Court, Fresno County; H. Z. Austin, Judge.

Robert J. Weir was convicted of a crime. Affirmed.

PER CURIAM. In charging the commission of the felony defined by section 476a of the Penal Code it is not essential to a statement of the facts constituting such offense that the information should allege that the check drawn by the person charged with the offense was presented to the bank. Such in effect was the ruling in the case of People v. Mohr, 157 Cal. 732, 109 Pac. 476. It follows logically that if such fact was not required to be pleaded against the defendant, it was not necessary to be established against him in order to secure and sustain his conviction.

The criminal intent of the defendent when making and drawing the check in question was an essential element of the offense with which he was charged; and he admitting the act but defending in part upon the ground that it was free from felonious intent, proof of the commission of similar acts, even though they be independent and disconnected, and were committed either before or after the perpetration of the crime charged, was relevant and competent for the purpose of showing guilty intent. People v. King, 23 Cal. App. 259, 137 Pac. 1076.

The evidence upon the whole sustains the verdict and judgment. The judgment and order denying a new trial are affirmed.

NOTE.—For other similar decisions, see Banking Law Journal Digest and Supplement §113.

THE LAW OF BANKING.

A COURSE OF STUDY IN THE LAW PERTAINING TO BANKS AND BANKING TRANSACTIONS.

BY JOHN EDSON BRADY OF THE NEW YORK BAR.

VIII. CLEARING HOUSES (*Continued.*)

§ 181. **Collection of Substituted Checks through Clearing House.**
Where a bank receiving a check for collection, accepts the drawee's check in payment and presents the substituted check through the clearing house, the collecting bank will be responsible to the owner of the original check, in the event that it is unable to collect the substituted check because of the failure of the drawer or drawee of such check before presentment.

§ 182. **Return of Checks under Clearing House Rule.**
A drawee bank which pays a check bearing a forged indorsement or a check which has been fraudulently altered, may recover the amount paid thereon irrespective of any clearing house rule. With reference to checks bearing a forgery of the drawer's signature, overdraft checks and checks on which payment has been stopped, the general rule is that where such a check has been paid through the clearing house, it must be returned by the drawee within the time specified by the clearing house rule or the payment will be regarded as final. There are, however, decisions in New York and Massachusetts which permit a drawee bank to recover the amount paid on an overdraft check, although the check is returned after the hour designated in the clearing house rule.

§181. **Collection of Substituted Check through Clearing House.** There is a rule quite well established in the law to the effect that a bank, which receives a check for collection, must collect it in money and may not receive in payment the drawee's draft or check on another bank. This is a rule to which bankers generally pay little heed. In making check collections, in this respect at least, they are governed more by the dictates of practical banking than by rules which have been promulgated by the courts. There are undoubtedly instances wherein it would be looked upon as poor banking practice for a bank holding a check for collection, to insist upon being paid in cash and to refuse to receive the drawee's draft in payment. It is well for banks to take notice, however, that a bank sometimes gets into legal difficulty through overlooking this somewhat strict requirement of the law. The decisions, in which the rule mentioned is laid down, were referred to in the article on this series appearing in the April, 1916, issue of the JOURNAL.

In the article appearing in last month's JOURNAL, we referred to the effect of presenting a check through the clearing house. In the first place it appears that there are cases in which it has been held that where

an extra day is required for making presentment through the clearing house, the drawer of the check is discharged from liability in the event that the check is not collected because of the failure of the drawee bank before presentment. This rule, however, is not universal; there is a conflict of authority on the point and some of the cases are to the effect that the drawer is not discharged in such circumstances. In the second place it appears that, where a check is presented through the clearing house thereby requiring extra time in presenting it, and the check remains unpaid because of the failure of the drawee bank the collecting bank is not responsible to the owner of the check, where the owner is aware that it is the common practice to collect checks through the clearing house. In other words, the presentment of a check through the clearing house may discharge the drawer from liability, but it does not make the collecting bank responsible to the owner of the check for the loss which he has sustained, providing the owner is aware of the existence of the clearing house method of collecting checks.

So it appears that there are two things which collecting banks do every day and which are liable to result in loss to the bank or to the person whom it represents, namely presenting checks through the clearing house and collecting checks in commercial paper instead of in cash. Banks will undoubtedly continue to transact their collection business without change as to method, notwithstanding the rules of law mentioned. In fact a change of method to conform to these rules would disrupt the entire banking system.

There are cases in which it appears that a bank has in one of the same transaction violated both of the rules referred to above, that is to say, a bank, having received a check for collection, accepts the drawee's check or draft in payment instead of insisting upon cash and then proceeds to collect the new check, which for convenience we may call the substituted check, by sending it through the clearing house. There are a few authorities which intimate that the collecting bank is protected from liability in receiving a check instead of cash in payment provided it exercises the utmost diligence in presenting the substituted check. There are no decisions, however, which protect the collecting bank where it undertakes to collect the substituted check by presenting it through the clearing house. In other words "utmost diligence" in these cases means that the collecting bank must present the substituted check immediately and is not permitted to hold it for collection through the clearing house. If it does hold and present it through the clearing house in the usual course of business and something happens in the meantime to prevent the collection, such as the failure of the bank by which or on which the substituted check is drawn, the collecting bank will be held responsible for the loss.

This proposition is illustrated in the case of Bank of Miller, 105 Ill. App. 224. The plaintiff drew a sight draft upon a corporation located in Chicago and mailed it to the defendant bank in Chicago. The de-

fendant presented the draft to the drawee by messenger and received therefor the drawee's check upon the National Bank of the Republic of Chicago. This occurred at about eleven o'clock Saturday morning. The defendant might have presented this check immediately to the National Bank of the Republic for payment or certification, and if it had done so, the check would have been paid or certified as requested by the defendant. The defendant, however, held the check and presented it through the clearing house on Monday morning. Payment was then refused because of the failure on that day of the corporation by which the check was drawn. It was held that the defendant was liable to the plaintiff.

After referring to the authorities on the question presented the court said: "The conclusion to be drawn from these cases and the text books cited by counsel is, that a draft may be surrendered and a check taken therefor, but all reasonable diligence must be used in presenting such check for collection, and if such diligence be used and the check is not promptly paid or certified, then the draft may be at once reclaimed. No general custom, if such custom existed, would excuse the collecting bank from exercising all reasonable diligence in collecting such check, and certainly a special usage would have no greater effect in excusing the bank, than would a general custom. National Bank of Commerce v. The American Exchange Bank, 151 Mo. 320; Minneapolis S. & D. Co. v. Metropolitan Bank, 76 Minn. 136; Marine Bank v. Chandler, 27 Ill. 525; Webster v. Granger, 78 Ill. 230." In the opinion it was further said: "The alleged particular custom and method of the bank of Commerce, (defendant) in relation to the presentation of drafts, receipt of checks therefor and retention of same until the following day, contrary to the general custom, was a particular or special custom, and in order to be binding on appellee, under the circumstances of this case, must have been actually known to him when he sent the draft for collection."

In another instance, the plaintiff being indebted to the defendant, sent a check for the amount on Gilman Sons & Co., bankers in New York. The defendant deposited the check in a Philadelphia bank which sent it to its New York correspondent. The latter bank presented the check to the drawee and received in payment a check on another bank in New York City. This substituted check was received about noon time and could have been presented within twenty minutes after its receipt, but the correspondent bank presented it through the clearing house on the following day, and payment was refused because of the failure of the Gilman Bank at 2:45 p.m., on that day. The correspondent bank then obtained possession of the original check and caused it to be protested; and the plaintiff, without knowledge of these facts, issued a second check to the defendant in payment of the original debt. Upon finding out how his first check had been handled, the plaintiff brought this action. It was held that sufficient diligence in presenting the sub-

stituted check for payment had not been used and that the plaintiff could recover. Noble v. Doughton, 72 Kan. 336, 83 Pac. Rep. 1048.

§182. **Return of Checks under Clearing House Rule.** It is customary for clearing houses to enact a rule permitting banks paying checks at the clearing house to return them to the banks from which they were received, if found not good and if returned before a certain hour on the day of payment, and requiring banks to which checks are returned in this manner to refund the amount thereof.

In order to comprehend the effect of a clearing house rule of this kind it may be well to first consider the question of returning irregular checks without reference to the clearing house rule. There are, of course, many kinds of irregular checks which are received daily by the banks on which they are drawn, such as forged checks, raised checks, overdraft checks and so on. There are certain cases where a drawee bank which has paid an irregular check may, as a matter of right, return the check to the bank to which it was paid and insist that the money be returned. If the latter bank refuses the demand, the paying bank will be permitted to recover in an action therefor. Checks coming within this class are those which bear a forged indorsement and those which have been fraudulently altered. As a general rule a drawee bank which has paid such a check may recover the amount from the party to whom the payment was made. It has this right irrespective of any clearing house rule. The clearing house rule permitting the return of checks before a certain hour on the day of payment adds nothing to the drawee's right in this regard, nor does it detract from any of its rights.

There are a number of instances of the payment of irregular checks wherein the drawee bank which has made payment will not be permitted to recover back the amount paid. Checks coming within this class are overdraft checks, checks on which payment has been stopped and checks bearing a forgery of the drawer's signature. The bank is supposed to know the state of the drawer's account; it is supposed to know the drawer's signature and it is supposed to know whether or not payment on a check has been stopped. If it makes a mistake in any one of these particulars and pays a check which it should not have paid, the law will require it to stand by its mistake and will not as a general rule permit it to recover the money from the party to whom it was paid.

Now, a payment at the clearing house is not a payment in the true significance of that word. At the time the clearance is made the drawee bank has no opportunity of looking over the checks which it receives at the clearing house. There may be among them checks belonging to the second class above referred to, that is, checks on which the drawer's signature was forged, overdrafts or stopped checks. It is to these checks that the clearing house rule applies. The drawee bank has until that hour on the day of payment specified in the clearing house to look over the checks which it has received at the clearing house, to throw out the irregular ones and return them to the bank from which they were re-

ceived. If they succeed in returning the checks within the time allowed by the clearing house rule, they are permitted to recover the money. If they are late, then as a general rule, payment is regarded as final.

The question has been raised as to whether or not a clearing house rule, allowing the return of checks found not good, will permit a drawee bank to return a check because of the failure of the drawer after the payment of the check at the clearing house. In a New York decision it appeared that the drawer of a check, which had been paid at the New York clearing house at 10 a.m., made an assignment shortly thereafter and the drawee bank, acting under the clearing house rule, returned the check prior to 3 p.m., to the bank by which it had been presented, which bank refunded the amount. It was held that the transaction did not operate as a payment of the check, nor bind the drawee bank, and that the payee could not maintain an action thereon against the drawee.

In the opinion in this case it was said: "A payment through the clearing house and a payment over the counters of a bank upon which a check is drawn are entirely different. The clearing house is simply a representative of all the banks who are members of it. Its purpose is to enable these banks to go to the clearing house each day and present checks drawn on other clearing house banks received the day before and receive from the clearing house checks drawn on the presenting banks which have been sent in by some other member. The clearing house then balances the checks sent by a bank against those sent to it, and later in the day a bank either pays or receives the balance due to or owing by it; in other words, it is an adjustment of balances, solely for the convenience of the banks who are members of the association. It is in no sense a payment binding upon the bank upon which it is drawn, so far as the payee named therein is concerned, since under one of the rules of the clearing house association a check or draft thus received may be returned to the bank from which it is received at any time that day before 3 o'clock in the afternoon."

The following quotation is also taken from the opinion of this interesting case:

"The payment of a clearing house balance is not a payment of any particular check and does not become so until the time within which the check may be returned has expired. This would seem to follow from the necessity of each case, because a bank upon which a check is drawn has no opportunity to examine it until after it has been received from the clearing house. Among the checks presented at the clearing house may be forged checks, checks drawn against insufficient funds, and checks upon which payment has been stopped, but, irrespective of their validity, all of them must, in making payment through the clearing house, be charged against the bank upon which they are drawn in order to ascertain and adjust the balance; and, if a check be thus paid, then the bank can protect itself under the rules by returning it to the bank from which it was received, within the time specified. This is precisely what the defendant did."

But, in National Union Bank v. Earle, 93 Fed. Rep. 330, a Philadelphia bank remitted an amount due to the plaintiff bank in New York by its cashier's check on another New York bank, in which it kept a deposit. The check was duly presented and paid through the clearing house. Later on the same day, the drawee bank upon learning of the suspension of the drawer, returned the check to the plaintiff, which bank was required to refund the amount under the clearing house rules. The drawee bank subsequently, without right, paid the money over to the receiver of the insolvent bank. It was held that the payment at the clearing house constituted a complete appropriation of the fund to the plaintiff bank and that the plaintiff was entitled to recover the amount of the check from the receiver.

With reference to the return of overdraft checks paid through the clearing house, it has been specifically held in Preston v. Canadian Bank of Commerce, 23 Fed. Rep. 179 that where the return is not made during the period of time allowed by the clearing house rule, the payment becomes final and the drawee bank is not entitled to recover the amount of the check.

In New York and Massachusetts, however, there are decisions to the effect that a drawee bank which pays a check at the clearing house without knowledge that it is an overdraft, may recover the amount of such check from the bank at which the payment was made, although, because of the failure to immediately discover the mistake, the check is not returned until after the time limited by clearing house rule. But in order to allow a recovery under the rule laid down in these cases, it must appear that the bank which received payment has not altered its position by paying over the proceeds to the owner of the check. Merchants' Nat. Bank v. National Bank, 139 Mass. 513; Citizens' Central Nat. Bank v. New Amsterdam Nat. Bank, 128 N. Y. App. Div. 554, 112 N. Y. Supp. 973.

Modern Banking and Trust Company Methods

BY

WILLIAM McCHESNEY MARTIN, A.B., LL.B.

CHAPTER XVIII. (Continued.)

TRUST COMPANIES. (Continued.)

The history of the Farmers Fire Insurance and Loan Company and the Pennsylvania Company for Insurances on Lives and Granting Annuities, as given, indicates very clearly the evolution of the trust company idea. Business in New York first developed to a point where trust company functions were needed, and then in Philadelphia conditions developed which resulted in an institution with power to act in a fiduciary capacity. Philadelphia does not seem to have borrowed the idea from New York, but, having found a need, went about filling it, using the Agency Houses of India to suggest the method.

THE GROWTH OF TRUST COMPANIES.

As the need for a trust company does not exist until a community is fairly well developed, it is natural to find that, in the early history of our country, the development of trust companies was extremely slow. We, therefore, are not astonished to find that in 1879 there were only 37 trust companies in the United States, while at the same time there were 2,048 national banks and 813 State banks.

This gradual development is shown by the table given below, containing figures compiled by the National Monetary Commission from 1879, the first year for which it seems to have been able to get anything definite, to and including 1909. The writer has added the figures for 1914 and 1915, taken from the reports of the Comptroller of the Currency of the United States.

States	1879	1884	1889	1894	1899	1904	1909	1914	1915
National Banks	2,048	2,625	3,239	3,770	3,583	5,331	6,893	7,525	7,605
State Banks	813	1,017	2,097	3,705	4,253	6,984	11,292	14,512	14,598
Trust Companies	37	44	63	228	276	924	1,079	1,564	1,664

LACK OF SUPERVISION.

From the above, it is seen that, beginning with the year 1889, trust companies began to grow in number rapidly. Five years later, although there were probably 500 companies that used the name "trust company" in their title, still, according to the report of the Monetary Commission, only 228 of them were really trust companies, all the rest using the name without performing the functions of a trust company and doing most any other kind of business. This was due in great measure to the fact that as late as 1897 there were thirty States which had no laws specifically governing trust companies. In the majority of States they were

without adequate supervision, and the latitude of operation was governed only by the whims of those that organized them.

As early as 1873, the Hon. John J. Knox, Comptroller of the Currency at that time, called attention to the conditions surrounding trust companies in the State of New York. He said that they were run practically without supervision of any kind. Due doubtless in a great measure to this criticism, at the suggestion of the Superintendent of Banking of New York, in 1874 trust companies in that state were brought under the supervision of the State Banking Department

CONFUSION AS TO MEANING OF WORDS "TRUST COMPANY."

However, as late as 1889, and in fact as late as 1905, a trust company to the people in general in perhaps the majority of States was a mysterious institution. In those States where it had been defined by law and was under supervision, its functions were understood, but in a very great many of the States, because its functions were not defined by law, it was seized on by the unscrupulous to promote "get-rich-quick schemes." During this period, even with legitimate companies, the word "trust" in a title meant so many different things that there was no such thing as a standardization of functions. A trust company in one place did certain things, and a trust company in another place did other things.

STANDARDIZATION OF TRUST COMPANY FUNCTIONS.

The situation at the present time, as disclosed in Chapter V, indicates that the functions of the most highly developed trust company can be included under the following heads: (1) Financial Department, which in some instances does a complete banking business and in others a banking business restricted in certain particulars. (2) Trust Department, which handles the work of acting as executor, administrator, trustee, guardian or curator, registrar of stocks and bonds, etc. (3) Bond Department, which buys and sells securities in the open market. (4) Real Estate Department, which manages, rents, and sells real property, and, as a subsidiary, has a department which makes loans on farm mortgages. In some instances, this Farm Loan Department is a separate department. (5) Savings Department, and (6) Safe Deposit Department. As will be seen from Chapter V, above referred to, there are a number of companies which exercise all of these functions, and there are other companies which exercise only some of the functions. But in every instance, there is a Trust Department for the handling of estates and for the purpose of acting as trustee, registrar of stocks and bonds, etc.

ORGANIZATION OF TRUST COMPANY SECTION AMERICAN BANKERS ASSOCIATION.

The fact that the words "trust company" had no well defined meaning and that there was considerable misunderstanding as to the functions of trust companies, led to the organization in 1896 of the Trust Company Section of the American Bankers Association. In regard to this, Mr. Breckinridge Jones, President of the Mississippi Valley Trust Company, in an address delivered before the Trust Company Section of the American Bankers Association on September 11, 1912, entitled "Achievements of

the Trust Company Section During the Past Fifteen Years," said: "... Many—I believe it might be said truthfully a majority—of the banks in the large cities where trust companies were generally operating, did not fully understand the functions of a trust company and looked on that institution with suspicion and as an unworthy rival. How could they do otherwise, when the name was constantly surrounded by the fog of ignorance? There were educated bankers, however, who realized that the trust company was not so much a rival of the banks as it was the banks' outgrowth or corollary—a co-ordinate branch of finance.... This antagonism on the part of the banks was reflected in the legislatures of the several States, evidenced at every session by bills to restrict the powers of trust companies in States where those powers were broad and by factious opposition to bills giving ample powers in States where additional legislation was needed. Many of these conflicts were acrimonious,—all were serious. Intelligent men, both bankers and trust company officials, appreciated the situation, and what might have grown into a wall of flame,—a permanent antagonism between the banks and trust companies, was smothered out when it was a tiny blaze. It became apparent that, both for the purpose of protection and in order to educate the public, companies doing a legitimate trust company business should have a national organization."

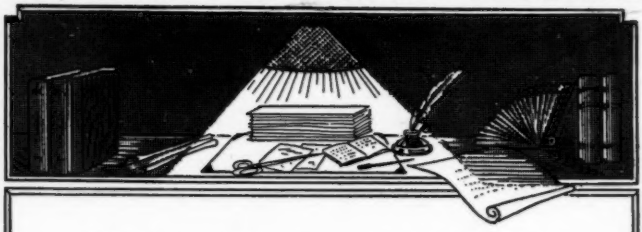
Due in great measure to the efforts of the Trust Company Section of the American Bankers Association, the words "trust company" to-day have a definite meaning.

ANTAGONISM OF THE BANKS.

Between the years 1894 and 1904, when a great many trust companies were being organized, considerable antagonism sprung up on the part of banks in regard to them. The banks freely stated that the trust companies were going beyond their charter powers and engaging in their business. In Missouri, an effort was made to take away their charters, on the ground that they were receiving general deposits and paying them out on demand on the check of the depositor, thereby establishing the relation of debtor and creditor between such companies and depositors. It was contended that a trust company could not receive money in exchange for its credit in the way a bank does,—that it had no authority to operate a general deposit account and receive money without paying interest on it. This discussion culminated in the case of The State ex informatione Crow, Attorney-General, v. Lincoln Trust Company, etc., (144 Mo. 562). In this case, it was held that a trust company could receive deposits and pay them out on the check of the depositor, but must pay interest on all its accounts. The further development along this line is shown by the fact that the last Legislature of Missouri makes it optional with a trust company whether or not it pays interest on deposits. It really gives it the right to do a commercial banking business.

(*To be continued.*)

INQUIRIES AND CORRESPONDENCE



This department places at your service able legal talent and experts on banking and financial matters. Inquiries from our subscribers are answered free. Name and address is published unless otherwise requested.

CONDUCTED BY JOHN EDSON BRADY OF THE NEW YORK BAR.

CAUTION.

In submitting a question it is essential that all of the facts involved be clearly set forth. If the question relates to a check, bill of exchange, note, or other negotiable instrument, or to any paper or document, a copy should be sent, also copies of letters having reference to the transaction out of which the question arises.

RECORDING CHATTEL MORTGAGE.

NEW YORK, August 26, 1916.

Editor, Banking Law Journal,

DEAR SIR:—A question has arisen under Chapter 348 of the Laws of 1916 of New York, with reference to recording chattel mortgages and instruments under which a bank receives stocks, bonds, or other securities as collateral for a loan.

Will you kindly inform me through the JOURNAL whether under this statute it is necessary for a bank to file any record of a loan transaction on the security of stocks and bonds, where the borrower withdraws part of the securities from day to day and substitutes other collateral in their stead.

Yours very truly, TREASURER.

Answer:—It is not necessary for a bank to place on record any document, under which it receives securities as collateral for a loan, where the securities are delivered to the bank at the time when the loan is made. Where, after such loan has been made, the borrower substitutes other securities in place of those originally pledged, no public record of the transaction is necessary. The object of recording such a mortgage or pledge is to protect the mortgagee or pledgee from the claims of innocent persons to whom the securities might be transferred or pledged if they were permitted to remain in the hands of the borrower.

Chapter 348 of the Laws of 1916, New York, amending section 230 of the Lien Law which went into effect on April 27, 1916, provides as follows:

"Every mortgage or conveyance intended as a mortgage of goods and chattels * * * which is not accompanied by an immediate

delivery and followed by an actual and continued change of possession of the things mortgaged is absolutely void as against the creditors of the mortgagor and as against subsequent purchasers and mortgagees in good faith unless the mortgage, or a true copy thereof, is filed as directed in this article. * * * This article shall not apply to the mortgage or pledge of or lien upon stocks or bonds mortgaged or pledged to secure the payment of a loan, which stocks or bonds, by the terms of a written instrument creating such mortgage, pledge or lien and setting forth the conditions of such loan, are to be delivered to the lender on the day such loan is made, and every such mortgage, pledge or lien of such securities, shall be valid as against creditors of such mortgagor or pledgor, provided, however, that if such securities are not delivered to the pledgee or mortgagee on the day such loan is made, the mortgage, lien or pledge therein intended to be created shall be absolutely void and of no effect as against the creditors of such mortgagor, pledgor or lienor, unless such instrument, or a true copy thereof, is filed as directed in this article on the day following the making of such loan, and provided also that every such mortgage, pledge or lien shall be absolutely void as against purchasers, pledgees or mortgagees in good faith of such stocks or bonds provided such stocks or bonds are delivered to such purchaser, pledgee or mortgagee at the time of such pledge or mortgage."

Ordinarily where the owner of personal property, mortgages it, he remains in possession of the mortgaged property. He is in a position to fraudulently pledge or sell the property to some third party. So the law provides that the mortgagee may protect himself by placing his mortgage on record. This recording of the mortgage is presumed to give notice to every one that the mortgagee has certain rights in the property. If he puts his mortgage on record, his interests are superior to those of any subsequent purchaser or mortgagee. If he does not record it and the mortgagor, being in possession of the property, pledges or sells it to some third person, who is unaware of the mortgagee's rights, the title of such third person is good as against the mortgagee's claim.

Now, the ordinary bank loan on security of stocks or bonds contemplates physical possession of the collateral by the bank. If possession is transferred to the bank at the time of the transaction, no record of the pledged collateral is necessary. No third person can possibly gain any rights in the stocks, superior to the bank's claim, while the stock is held by the bank. All the bank has to look out for is that the person pledging the stock is the owner of it and that no other person has a prior claim against it which might defeat the bank's rights.

It so happens that banks sometimes make loans on security of stocks and bonds without receiving the collateral at the time the loan is made. The bank relies on the borrower's word that he will deliver the collateral without delay. The borrower, if he is dishonest, is then in a position to use the collateral to obtain a loan from some other party, who does

not know that the bank has already loaned on the security of this particular collateral.

This statute provides that it shall not apply to a case where stocks are pledged under an agreement by the terms of which the stock is to be delivered to the lender on the day the loan is made.

But, in such a case, if the borrower does not deliver the collateral on the day of the loan, then the note or other instrument containing the terms of the loan must be recorded on the day following the loan in order to protect the lending bank from the claims of subsequent purchasers or pledgees.

The amendment further provides that where a bank lends money without receiving the collateral, its rights shall be subservient to those of a subsequent purchaser or pledgee in good faith, provided that possession of the collateral is delivered to such purchaser or plegdee at the time of the purchase or pledge. Apparently the lending bank is not protected in such a case even if it promptly records the instrument setting forth the terms of its loan.

This statute does not offer the bank much protection against subsequent purchasers and lienors where it makes a loan and leaves the collateral in the hands of the borrower. It does, however, offer protection against the borrower's creditors. If a bank makes a loan under an instrument providing that the collateral is to be delivered on the same day and the borrower fails to deliver the collateral as agreed, then the bank has until the following day to file a copy of its agreement. If it files the agreement on the following day then its rights in the stock are paramount to the claims of creditors. And if third persons have purchased or acquired a lien in the collateral, unaccompanied by actual possession, in the meantime, then the bank's rights are superior to the rights of any such third persons.

This statute has little or no application to the case where a loan runs a long for a period of time and the borrower comes in from day to day and takes away part of the collateral and leaves other collateral in its place. Here the bank gains physical possession of the stock at the same time when its lien on the stock is agreed upon. No third party can intervene here. There is no gap between the time when the bank contracts for a lien on the stock and the time when the lien becomes effective by delivery of the stock. All the bank need worry about in such a case is that there are no prior parties who have acquired rights in the pledged stock. Recording the note or contract of pledge is neither necessary nor helpful in such a case.

FEDERAL BILL OF LADING ACT.

Below is given the complete text of the recently enacted Federal Bill of Lading Act. The statute, as here given, is reprinted from a pamphlet issued by the Irving National Bank of New York, omitting because of lack of space the valuable analysis of the law contained in the pamphlet.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That bills of lading issued by any common carrier for the transportation of goods in any Territory of the United States, or the District of Columbia, or from a place in a State to a place in a foreign country, or from a place in one State to a place in another State, or from a place in one State to a place in the same State through another State or foreign country, shall be governed by this Act.

SEC. 2. That a bill in which it is stated that the goods are consigned or destined to a specified person is a straight bill.

SEC. 3. That a bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is an order bill. Any provision in such a bill or in any notice, contract, rule, regulation, or tariff that it is nonnegotiable shall be null and void and shall not affect its negotiability within the meaning of this Act unless upon its face and in writing agreed to by the shipper.

SEC. 4. That order bills issued in a State for the transportation of goods to any place in the United States on the Continent of North America, except Alaska and Panama, shall not be issued in parts or sets. If so issued, the carrier issuing them shall be liable for failure to deliver the goods described therein to anyone who purchases a part for value in good faith, even though the purchase be after the delivery of the goods by the carrier to a holder of one of the other parts: *Provided, however*, That nothing contained in this section shall be interpreted or construed to forbid the issuing of order bills in parts or sets for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries, or to impose the liabilities set forth in this section for so doing.

SEC. 5. That when more than one order bill is issued in a State for the same goods to be transported to any place in the United States on the Continent of North America, except Alaska and Panama, the word "duplicate," or some other word or words indicating that the document is not an original bill, shall be placed plainly upon the face of every such bill except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to anyone who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill: *Provided, however*, That nothing contained in this section shall in such case for such transportation of goods to Alaska, Panama, Porto Rico, the Philippines, Hawaii, or foreign countries be interpreted or construed so as to require the placing of the word "duplicate" thereon, or to impose the liabilities set forth in this section for failure so to do.

SEC. 6. That a straight bill shall have placed plainly upon its face by the carrier issuing it "nonnegotiable" or "not negotiable."

This section shall not apply, however, to memoranda or acknowledgments of an informal character.

SEC. 7. That the insertion in an order bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill or constitute notice to a purchaser thereof of any rights or equities of such person in the goods.

SEC. 8. That a carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods or, if the bill is an order bill, by the holder thereof, if such a demand is accompanied by—

(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods;

(b) Possession of the bill of lading and an offer in good faith to surrender,

properly indorsed, the bill which was issued for the goods, if the bill is an order bill; and

(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods, in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

SEC. 9. That a carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is—

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a straight bill for the goods, or

(c) A person in possession of an order bill for the goods, by the terms of which the goods are deliverable to his order; or which has been indorsed to him, or in blank by the consignee, or by the mediate or immediate indorsee of the consignee.

SEC. 10. That where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to anyone having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he—

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

Such request or information, to be effective within the meaning of this section, must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods.

SEC. 11. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers goods for which an order bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to anyone who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier and notwithstanding delivery was made to the person entitled thereto.

SEC. 12. That except as provided in section twenty-six, and except when compelled by legal process, if a carrier delivers part of the goods for which an order bill had been issued and fails either—

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered with a description which may be in general terms either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill to anyone who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto.

SEC. 13. That any alteration, addition, or erasure in a bill after its issue without authority from the carrier issuing the same, either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor.

SEC. 14. That where an order bill has been lost, stolen, or destroyed a court of competent jurisdiction may order the delivery of the goods upon satisfactory

proof of such loss, theft, or destruction; and upon the giving of a bond, with sufficient surety, to be approved by the court, to protect the carrier or any person injured by such delivery from any liability or loss incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees: *Provided*, a voluntary indemnifying bond without order of court shall be binding on the parties thereto.

The delivery of the goods under an order of the court, as provided in this section, shall not relieve the carrier from liability to a person to whom the order bill has been or shall be negotiated for value without notice of the proceedings of or the delivery of the goods.

SEC. 15. That a bill, upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed, plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability.

SEC. 16. That no title to goods or right to their possession asserted by a carrier for his own benefit shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien.

SEC. 17. That if more than one person claim the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for nondelivery of the goods or as an original suit, whichever is appropriate.

SEC. 18. That if some one other than the consignee or the person in possession of the bill has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods, either to the consignee or person in possession of the bill or to the adverse claimant, until the carrier has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

SEC. 19. That except as provided in the two preceding sections and in section nine, no right or title of a third person, unless enforced by legal process, shall be a defense to an action brought by the consignee of a straight bill or by the holder of an order bill against the carrier for failure to deliver the goods on demand.

SEC. 20. That when goods are loaded by a carrier such carrier shall count the packages of goods, if package freight, and ascertain the kind and quantity if bulk freight, and such carrier shall not, in such cases, insert in the bill of lading or in any notice, receipt, contract, rule, regulation, or tariff, "Shipper's weight, load, and count," or other words of like purport, indicating that the goods were loaded by the shipper and the description of them made by him or in case of bulk freight and freight not concealed by packages the description made by him. If so inserted, contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

SEC. 21. That when package freight or bulk freight is loaded by a shipper and the goods are described in a bill of lading merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill of lading that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill of lading, such statements, if true, shall not make liable the carrier issuing the bill of lading, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may also by inserting

n the bill of lading the words "Shipper's weight, load, and count," or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill of lading: *Provided, however,* Where the shipper of bulk freight installs and maintains adequate facilities for weighing such freight, and the same are available to the carrier, then the carrier, upon written request of such shipper and when given a reasonable opportunity so to do, shall ascertain the kind and quantity of bulk freight within a reasonable time after such written request, and the carriers shall not in such cases insert in the bill of lading the words " Shippers' weight," or other words of like purport, and if so inserted contrary to the provisions of this section, said words shall be treated as null and void and as if not inserted therein.

SEC. 22. That if a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the receiving of goods and issuing bills of lading therefor for transportation in commerce among the several States and with foreign nations, the carrier shall be liable to (a) the owner of goods covered by a straight bill subject to existing right of stoppage in transitu or (b) the holder of an order bill, who has given value in good faith, relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

SEC. 23. That if goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner, and an order bill is issued for them, they can not thereafter, while in the possession of the carrier, be attached by garnishment or otherwise or be levied upon under an execution unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court.

SEC. 24. That a creditor whose debtor is the owner of an order bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not readily be attached or levied upon by ordinary legal process.

SEC. 25. That if an order bill is issued the carrier shall have a lien on the goods therein mentioned for all charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill and all other charges incurred in transportation and delivery, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier.

SEC. 26. That after goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods themselves to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be an order bill.

SEC. 27. That an order bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank.

SEC. 28. That an order bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner.

SEC. 29. That a bill may be tansferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby. A straight bill can not be negotiated free from existing equities, and the indorsement of such a bill gives the transferee no additional right.

SEC. 30. That an order bill may be negotiated by any person in possession of the same, however, such possession may have been acquired, if by the terms of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery.

SEC. 31. That a person to whom an order bill has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value; and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him.

SEC. 32. That a person to whom a bill has been transferred, but not negotiated, acquires thereby as against the transferor the title to the goods, subject to the terms of any agreement with the transferor. If the bill is a straight bill such person also acquires the right to notify the carrier of the transfer to him of such bill and thereby to become the direct obligee of whatever obligations the carrier owed to the transferor of the bill immediately before the notification.

Prior to the notification of the carrier by the transferor or transferee of a straight bill the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferor, or by a notification to the carrier by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time, with the exercise of reasonable diligence, to communicate with the agent or agents having actual possession or control of the goods.

SEC. 33. That where an order bill is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

SEC. 34. That a person who negotiates or transfers for value a bill by indorsement or delivery, unless a contrary intention appears, warrants—

(a) That the bill is genuine;

(b) That he has a legal right to transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the bill;

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied if the contract of the parties had been to transfer without a bill the goods represented thereby.

SEC. 35. That the indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations.

SEC. 36. That a mortgagee or pledgee or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or warrant the genuineness of such bill or the quantity or quality of the goods therein described.

SEC. 37. That the validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress, loss, theft, or conversion, if the person to whom the bill was negotiated or a person to whom the bill was subsequently negotiated, gave value therefor in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress, loss, theft, or conversion.

SEC. 38. That where a person, having sold, mortgaged, or pledged goods which are in a carrier's possession and for which an order bill has been issued, or having sold, mortgaged, or pledged the order bill representing such goods, continues in possession of the order bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, shall have the same effect as if the first purchaser of the goods or bill has expressly authorized the subsequent negotiation.

SEC. 39. That where an order bill has been issued for goods no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation.

SEC. 40. That, except as provided in section thirty-nine, nothing in this Act shall limit the rights and remedies of a mortgagee or lien holder whose mortgage or lien on goods would be valid, apart from this Act, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them.

SEC. 41. That any person who, knowingly or with intent to defraud, falsely makes, alters, forges, counterfeits, prints or photographs any bill of lading purporting to represent goods received for shipment among the several States or with foreign nations, or with like intent utters or publishes as true and genuine any such falsely altered, forged, counterfeited, falsely printed or photographed bill of lading knowing it to be falsely altered, forged, counterfeited, falsely printed or photographed, or aids in making, altering, forging, counterfeiting, printing or photographing, or uttering or publishing the same, or issues or aids in issuing or procuring the issue of, or negotiates or transfers for value a bill which contains a false statement as to the receipt of the goods, or as to any other matter, or who, with intent to defraud, violates, or fails to comply with, or aids in any violation of, or failure to comply with any provision of this Act, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding $5,000, or both.

SEC. 42. First. That in this Act, unless the context of subject matter otherwise requires—

"Action "includes counterclaim, setoff, and suit in equity.

"Bill" means bill of lading governed by this Act.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Person" includes a corporation or partnership, or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"State" includes any Territory, District, insular possession, or isthmian possession.

SEC. 43. That the provisions of this Act do not apply to bills made and delivered prior to the taking effect thereof.

SEC. 44. That the provisions and each part thereof and the sections and each part thereof of this Act are independent and severable, and the declaring of any provision or part thereof, or provisions or part thereof, or section or part thereof, or sections or part thereof, unconstitutional shall not impair or render unconstitutional any other provision or part thereof or section or part thereof.

SEC. 45. That this Act shall take effect and be in force on and after the first day of January next after its passage.

PRACTICAL PUBLICITY.

The teaching of thrift to wage earners is today as essential as any of the studies that are taught in the great universities; or, as that of training men in banking institutions how to safeguard investments.

According to statistics the percentage of men who are without funds at the age of 60 is appalling. This being a fact, the man who originates a plan to practically demonstrate the true value of economy, even though it be for the purpose of influencing business to come to him, is a true philanthropist and deserves the patronage he is seeking.

Practical publicity, whether it be from the operation of some mechanical device, or from illustration by means of scenic effects placed where they attract the attention of the throngs, is undoubtedly the most effective, for the reason that it furnishes food for thought to many a careless individual, whose mind is not sufficiently impressed with statements of fact in the literature of today, and who has always gone on the principle of letting the future take care of itself.

It is this class of people who are the hardest to reach and who stand in the most need of being taught the true value of frugality.

The most unique demonstration of practical and effective publicity, in so far as encouraging thrift and frugality is concerned, that has been brought to our attention, was recently staged in Chicago by the Greenebaum Sons Bank & Trust Company.

The plan originated in the mind of Walter J. Greenebaum, cashier of that institution, who realized the difficulty of impressing upon many of the people the great need for preparing for a "rainy day." To do this effectively a practical demonstration of industry, and thrift was necessary. The problem was to find the method by which this could be best accomplished. Probably numerous methods occurred to Mr. Greenebaum. Happily his mind turned to the most industrious, the most frugal and the most thrifty of all living things, the "bee," termed by some the "honey bee" and often given the sobriquet of "busy bee," the latter being by all means the most appropriate.

Mr. Greenebaum knew that, if the bees in their hives could be exhibited at work, in a manner that would illustrate how they create their product, how they store it and how they conserve it, no more impressive lesson could be taught to the unwary.

After having one of the large show windows of the bank, fronting on the La Salle Street side, arranged by the aid of painted scenery to represent a minature farm, with a clover field and pasture with cattle grazing, he procured two full

hives of bees and had them placed in this window. From the fiction clover field to the bee hives there was a pathway strewn with little savings banks, and at intervals along this trail were three sign posts with the following legends:

"If men were as wise as these little bees, there would never be any paupers."

"If these bees had not saved their honey, they would be starving now. Are you saving any honey for future use?"

"If you want some honey in later days when honey may be hard to get, start storing a little every day."

The placing of the bee hives in the window with the live bees in them quickly attracted a large crowd on La Salle Street. But a slight accident as quickly dispersed them, while at the same time the excitement caused by the accident brought to the scene many times the number of the crowd before the accident.

The accident was caused by one of the men carrying one of the hives from the wagon to the inside of the bank, colliding with another man coming out of the building, which caused him to drop the hive of bees to the sidewalk. Instantly the bees, ordinarily inoffensive and peaceable, were on the war path, and notwithstanding the crowd were all innocent onlookers, none of them being in any way to blame for the accident to the bees' home, the bees were far more busy than when quietly plying their vocation of gathering and storing honey; and while their implements of warfare are not as fatal as the German 42 centimeter gun, their fire is as rapid as that of a machine gun, and when they strike they impress the recipient that they are on the firing line.

There is no doubt that a number of those that came in contact with one of those little busy bees came to the conclusion that if the bee that sometimes gets into the ambitious politician's bonnet were as forcible as those they met on La Salle Street, there is no wonder that these politicians are looked upon as live wires.

Nevertheless the bees were installed and the experiment was effective. Many in the crowd grasped the true meaning of the lesson and quite a few opened accounts in the bank.

Banks in all parts of the country would find this method of publicity a valuable one for influencing many people to see the need of frugality and thrift.

Mr. Greenebaum takes great pleasure in recommending the plan to other banks as a business getter.

LUNCHEON IN HONOR OF HAROLD BEAUCHAMP.

"Financial New Zealand during War Times" formed the basis of an unusually interesting discussion which took place at a luncheon given on September 6 at the Hardware Club by Mr. Lewis E. Pierson, Chairman of the Board of Directors of the Irving National Bank, in honor of Mr. Harold Beauchamp, Chairman of the Board of Directors of the Bank of New Zealand. Among the guests present to meet Mr. Beauchamp, were the following: Mr. Pierre Jay, Chairman, Board of Directors, Federal Reserve Bank, N. Y. City; Mr. Jas. S. Alexander, President, National Bank of Commerce, N. Y. C. and Chairman of the Clearing House Committee; and Mr. Fred I. Kent, Vice-President, Bankers Trust Company, N. Y. City.

The conditions described by Mr. Beauchamp as existing in New Zealand are somewhat surprising because of the well-known strain to which that country has been subjected in its determination to be properly represented in the great struggle which is taking place in Europe and to which all parts of the British Empire are contributing so splendidly. As described by Mr. Beauchamp, money is extremely easy; despite war conditions there has been no lack of funds for the prosecution and development of enterprises throughout the Dominion. Indeed, it may be said that New Zealand has actually shared in what may be termed "war prosperity"—a condition popularly supposed to be confined to countries able to deal with the war situation as neutrals. In spite of greatly reduced facilities and the economic disturbance incident to the sending of so many thousand producers

to the European battle fields, New Zealand's exports and imports for the year 1916 are higher than during any of the three preceding years.

The relation of the Bank of New Zealand to the Government is one not easy to comprehend in a situation like ours, in which the interest of the government in banks is confined to such measures of regulation as are necessary in safeguarding the interest of the public concerned. In the Bank of New Zealand 50% of the stock is held by the government, on the Board of Directors four of the six members are appointed by the government and in addition the government appoints a general auditor who exercises full suspensory powers concerning actions taken by the Board. The bank looks after the negotiation of government loans and performs a number of other classes of service towards the government entirely foreign to the theory of banking in this country.

AMERICAN BANKERS ASSOCIATION CONVENTION.

The elaborate plans which have been made for the convention of the American Banker's Association to be held at Kansas City, the week of September 25th, give promise that this convention will be the greatest one which the association has ever held. As we go to press at about the time the convention is being called to order, we feel that it would not be helpful to publish the program which has been arranged. The next issue of the JOURNAL, however, will contain the full details of the proceedings at Kansas City.

AMENDMENTS TO THE NEW YORK BANKING LAW.

Since the enactment of the New York Banking Law in 1914, many of the sections of the statute have been amended by the legislatures of 1915 and 1916.

Baker Voorhis & Co., of New York City, have published a paper bound supplement to Paine's Banking Laws, by Willis S. Paine, LL.D., which presents in full the amendments to the banking law passed during the legislative sessions of 1915 and 1916. The pamphlet also contains decisions under the banking and penal statutes and the opinion of the Attorney General. Price of the supplement is 75c.

BROWN BROTHERS NEW BUILDING.

Brown Brothers & Co., bankers of New York City, are plannung a marble addition to their present banking house at Wall and Hanover Streets. The addition will involve an expenditure of about $200,000. When the new structure is completed Brown Brothers will be in possession of the entire block front on the east side of Hanover Street between Wall and Beaver Streets, a frontage of 213 feet. The firm of Brown Brothers was founded by Alexander Brown, who immigrated to this country from the north of Ireland in 1800. He landed at Baltimore, where he engaged in business as a linen importer. A branch office was opened in Philadelphia in 1818 and in 1825 the New York office was established on Pine Street, under the name of Brown Brothers & Co., Importers and Exporters of Linen, Ship Owners and Merchant Bankers.

BROADWAY TRUST COMPANY INVESTMENT DEPARTMENT.

In the investment circular issued by the investment bond department of the Broadway Trust Company of New York City under date of September 6, 1916, the following appear among the attractive investment offerings:

American Foreign Securities Company 3 year 5% collateral notes, due August 1 1919, yielding about 5.73.

Union Pacific R. R. Co. first mortgage R. R. and land grant 4s due July 1, 1947, yielding about 4.15.

Pennsylvania Railroad Company consolidated mortgage 4½s, due August 1, 1960, yielding about 4.25.

New York Telephone Co. first and general mortgage 4½s, due November 1, 1939, yielding about 4.63.

FEDERAL RESERVE COLLECTION SYSTEM.

The Credit Man's view of the recently inaugurated check collection plan of the Federal Reserve Bank is shown in the following extract from general letter No. 3 issued September 1, 1916, by the National Association of Credit Men:

The recent regulation of the Federal Reserve Board providing for a check clearance system at exact cost, (not a free system as many seem to think) is one of the most interesting subjects today in business finance. It is not possible to introduce great changes or to unseat established customs without some wrenching and rasping, and the bringing into play of a change so far reaching as that provided for by the check clearing regulations of the Federal Reserve Board must of necessity arouse some antagonism.

It has been customary for many banks to charge exchange that produces a good income, even though the charges might be imposed upon the payment of the checks of the bank's customers. That this income is to be affected has occasioned some alarm.

The bigness of the question suggests careful consideration and we venture to lay before our members the following advantages and disadvantages of the system as they have been summarized by a close student and experienced practitioner in banking matters.

The advantages, as summarized, are:

1. Direct and prompt presentation of checks.
2. The elimination of exchange charges which in some cases have not been equitable, in other cases, quite excessive.
3. Reduction of the expense of collection to as near absolute cost as possible.
4. The release and more equitable distribution of the large balances at present maintained by the smaller banks in the banks in larger centers for the purpose of receiving par collection of out-of-town miscellaneous items.

The disadvantages, as summarized, are:

1. The loss of exchange on the part of the smaller banks, which exchange they have deducted in remitting checks on themselves.
2. The revision—and in many cases, termination of the reciprocal relations which have under the old system been maintained for many years between the smaller banks and their correspondents in larger cities, as the federal reserve banks will to a great extent render the same service.

Balancing advantages against disadvantages, the unprejudiced must recognize what is to be gained under the system as of greater value to business than what would be lost to the banks.

It is to be hoped that this important matter is to be fairly treated by all interests and that there will prevail a unanimity of sentiment in favor of a system that will remove from the channels of business another burden and tax on country wide distribution.

CHARLES O. AUSTIN APPOINTED BANKING COMMISSIONER.

Charles O. Austin, who since March 1st has been Deputy Commissioner of Insurance and Banking in Texas, was appointed on August 31st to the position of Commissioner of Insurance and Banking to succeed Commissioner Patterson, deceased. Mr. Austin was born in Missouri and at one time was a bank examiner for that state. He was later made cashier of the Mechanics' National Bank at St. Louis, and subsequently served as vice-president of the National Bank of North America of Chicago. After being compelled to retire from business on account of ill health in 1904, Mr. Austin took up his residence in Texas and for the past eleven years has lived at San Antonio.

J. FLETCHER FARRELL BECOMES TREASURER OF OIL COMPANY.

J. Fletcher Farrell, vice-president and director of the Fort Dearborn National Bank of Chicago has been offered and has accepted the position of treasurer of the Sinclair Oil & Refining Corporation, a company with interests in New York, Chicago and Oklahoma. Mr. Farrell commenced the duties of his new office on September 1st, at which time he assumed charge of the financial affairs of this great corporation, recently organized by its president, H. F. Sinclair. The newly appointed treasurer will make his headquarters in the New York offices of the Company and is a notable addition to the list of bankers who in recent years have

J. FLETCHER FARRELL

deserted Chicago and have become affiliated with banking or industrial corporaitons in New York. Mr. Farrell will not relinquish the directorship which he holds in the Fort Dearborn National Bank and the Woodlawn Trust & Savings Bank. The company with which Mr. Farrell has become affiliated is the result of a combination of several of the most successful producing, pipe line and refining companies located in Kansas, Oklahoma and North Texas. The assets of the company aggregate more than fifty million dollars. Among the concerns involved in the Sinclair Oil & Refining Corporation merger were the Cudahy Refining Co., and the Miliken Refining Co.

GUARANTY TRUST COMPANY PROMOTIONS.

The Guaranty Trust Company of New York City on August 31st announced four promotions of members of its official family which have commanded considerable interest in banking circles. After a meeting of the Executive Committee the new appointments were given out as follows:

William P. Conway, Treasurer, has been made a Vice-President; N. Devereux Putnam, Secretary, has been made Treasurer; Fred W. Ellsworth, Publicity Manager, has been made Secretary; and R. B. F. Randolph, Chief Clerk, has been made Assistant Secretary.

Mr. Conway is one of the youngest Vice-Presidents of a large New York financial institution, being just thirty-five years old. He entered the Bond Department in 1911. Two years later he was elected Assistant Treasurer of the Company, and in March, 1916, he was made Treasurer.

Mr. Putnam entered the Company in 1895 as a messenger. He was later employed in the Trust, Transfer, Registration and Loan Departments. In 1910 he was elected Assistant Secretary and in March last he was made Secretary of the Company.

Mr. Ellsworth, who now becomes the Secretary of the Guaranty Trust, stands out prominently among the banking publicity men of the United States. There are very few men in this particular line of activity who are more widely known.

He came to the Guaranty six years ago from the First National Bank of Chicago, and under his direction the Publicity and New Business Department has developed from a one-man department to its present large organization. He has been an active "A. I. B." man.

Mr. Randolph has worked his way up in the Company from his first position as messenger in 1905. A year ago he was made Assistant Chief Clerk and last March was promoted to Chief Clerk.

All of these men are extremely popular with their fellow workers in the company and the news of their deserved promotions was well received.

PROFESSOR IRVING FISHER'S REASONS FOR SUPPORTING PRESIDENT WILSON.

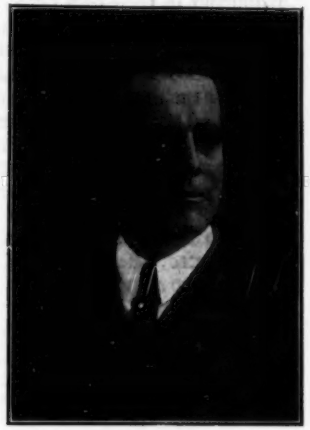
TOLD IN THE NEW YORK TIMES OF AUGUST 27.

As is well known, Irving Fisher, Professor of Political Economy of Yale University, is one of the leading economists of modern times. His years of experience as a teacher, lecturer and writer on political economy, together with his independent position regarding party politics, qualify him to point out why voters should support President Wilson. We take pleasure in giving in part the Professor's most cogent ones:

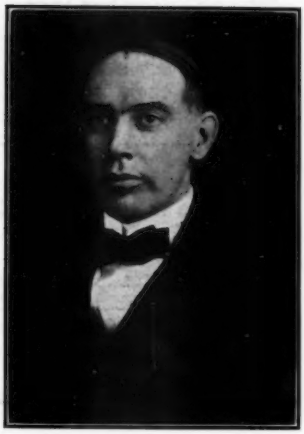
(1) The so-called issues of "Americanism," preparedness, the Lusitania incident the Mexican situation, and all others that have grown out of foreign affairs, appear to me to be merely "red herrings across the trail," intended to put the public off the scent. I have little doubt that, by diverting attention from themselves to these trumped-up issues, the Republican "old guard" hope to "put over" on the public another "Payne-Aldrich" tariff. They expect to work the war and Mexico for all they are worth to both hide and guide their own private interests after the election. The real joker in the Republican platform is a plank which, when the time comes if it does, will be solemnly cited as a mandate from the people for restoring the good old-fashioned high protection. * * *

(2) Moreover, quite irrespective of the moral issue in "protection," it seems to me bad national policy to keep the tariff longer in politics. The election of Mr. Hughes would surely do this. That of Mr. Wilson would at least go far toward dropping the tariff out of politics and toward taking politics out of the tariff. It is worth noting that if such a result can be accomplished through a tariff commission it will certainly not be through a tariff commission appointed by protectionists. * * *

W. P. CONWAY,
Vice President of the Guaranty Trust Company.



N. D. PUTNAM,
Treasurer of the Guaranty Trust Company.



FRED. W. ELLSWORTH,
Secretary of the Guaranty Trust Company.

R. B. F. RANDOLPH,
Assistant Secretary of the Guaranty Trust Company

(3) I have not agreed with all parts of Mr. Wilson's Mexican policy, but I believe that, at heart, it is sounder than that which Mr. Hughes seems to indorse. Few of the American people realize, as Mr. Wilson realizes, that here too, is a case (and a far worse one than American protection) of special interests capturing a Government in their own behalf. The people of Mexico have, I believe, been exploited by a handful of unscrupulous foreign capitalists, including some Americans who, through Diaz, virtually robbed Mexico. Diaz virtually took the lands and liberties of the Mexican people and sold them to foreign concessionaires. These exploiters, or their agents, sought to continue the system through the assassination of Madero and the elevation of Huerta. * * *

(4) So far as our relation to European affairs is concerned, I do not think that we shall become more efficient by swapping horses while we are crossing a stream. A change may plunge us into war, and it would certainly, in the four months between election and inauguration, paralyze our foreign policy completely. From November to March may be among the most critical months of the war. If Mr. Hughes is elected, neither we nor foreign nations will know, during that interim, exactly where we stand. * * *

(5) There is another great danger to our national efficiency in voting the Republican ticket. If Mr. Hughes is elected the Senate will probably remain Democratic. Only a Republican landslide can make the Senate Republican, and of such a landslide there seems no prospect. It seems unlikely that the Republicans can retain all sixteen of the Republican seats which will be vacated, and at the same time win half of the eighteen Democratic vacancies. Yet a victory as complete as this must be won in order even to obtain a Republican majority of one vote. * * *

(6) The Democratic platform is more progressive and effective than the Republican. Its plank on public health, for instance, is the best which we have yet had in any national platform. This means, I hope, that this great subject, the basis of the statesmanship of Lloyd George and other European leaders, will soon be brought before the American people as never before. * * *

(7) I think the Democrats have kept faith with the people and deserve re-election on their record. Taken as a whole the Wilson Administration has been more constructive than any previous Administration for a generation. The Federal Reserve act, the Underwood act, the Child Labor act, and a half dozen others of importance are a monument, and an imposing one, to Mr. Wilson's efficiency in proposing, preparing, and pushing legislation through Congress. It is also an earnest of what we may further expect of him in carrying out his party pledges if re-elected.

(8) I also think that Mr. Wilson has withstood, with remarkable firmness, the tremendous pressure of office seekers and maintained, as well as any previous President, especially at a change of Administration, the principles of civil service reform. The attempt to prove the contrary has failed.

(9) Like many other voters, I am repelled, rather than attracted, by a compaign of carping criticism in which the speeches of the Republican candidate consist chiefly of fault-finding, even where faults are not to be found, ignoring virtues, even where they are obvious, and proposing nothing definite of his own. Ridicule is a cheap political device which ill befits Mr. Hughes. * * *

(10) Finally, whatever mistakes have been committed constitute a safeguard against further mistakes. All experience consists of trial and error. In other words, four years' experience constitutes, in itself, a reason for re-election. I am a strong believer in re-electing to a second term any President who has in the least merited re-election. Eight years continuous office holding affords considerably more of that efficiency in administration of which Mr. Hughes speaks than "turning the rascals out" every four years. And few administrators learn more or faster from their experience than President Wilson.

THOMAS A. EDISON TELLS IN THE NEW YORK "TIMES" WHY HE WILL VOTE FOR WILSON.

"Times are too serious to talk in terms of Republicanism or Democracy. Parties are all right. Reckon we've got to have them with our system of government. But when it's America that's at stake, men have got to vote as Americans and not as Democrats or Republicans.

"This man Wilson has had a mighty hard time of it," he continued. "I don't believe there was ever a President who had as many big questions to decide, as many big problems to solve. One has followed the other, and now and then they have come in bunches. He hasn't always pleased me, just as I suppose he hasn't always pleased other people, but when you look the record over it's so good that criticism comes close to being nothing more than cheap faultfinding.

"A fool or a coward would have had the United States in all sorts of trouble. As it is, we are at peace, the country was never more prosperous, and we have the strength that comes with honor and integrity of purpose.

"Neutrality is a mighty trying policy, but back of it are international law, the rights of humanity, and the whole future of civilization. Wilson has won victories by diplomacy that are far more important to mankind than any victories that we could have won by war. I am no pacifist. I believe that there are times when a nation has to fight. But war for the sake of war, or war for purposes of conquest, is horrible and unthinkable.

"I imagine that Wilson wasn't very keen for preparedness at first. Maybe so. But when he saw that intelligent public opinion was overwhelmingly in favor of it, and that our own safety demanded it, he set machinery to work, that will probably give us a sound, sane, and adequate national defense. What if it was a change of mind? A President who refused to change his mind to meet changed conditions would be a dangerous man.

"President Wilson's Mexican policy has been wise and just and courageous. Mexico has been a troublesome neighbor, but war and conquest are not going to make her a better one. Both against England, and then against human slavery, the United States has worked out her salvation through revolution, and it was a pretty slow, trying process

"The tariff is a scientific affair, not political at all. A tariff commission will lift the whole business out of politics. It ought to be our hope that Congress will give the body all the dignity of the Supreme Court, so that the President will be in a position to get famous experts for the work. There are too many men in the public service already that private employment wouldn't pay a dollar to.

"I have never known so many dangerous questions brought up for decision to any one President. Look at the railroad strike that piled up on top of Mexico and all the other things. Why, such a strike would have thrown the whole country into confusion, and had disastrous results. I think he rose to the occasion splendidly just as he has risen to every other occasion that called for courage and wisdom.

"In my opinion, Mr. Hughes, if President, would have found it difficult to decide on the best course for the Government to take in such matters. His capacity for hindsight, as we learn from his speeches, is highly developed, but as to his foresight we are not equally well informed.

"They say Wilson has blundered. Perhaps he has. But I notice that he usually blunders forward.

"Mr. Wilson has now had about four years of experience, and I think that he has earned faith and trust. I do not think it a logical or sensible thing to change to an inexperienced and untried man just for the sake of change, or without much better reasons being given for the change than any I have noticed."

E. B. WILSON ORGANIZES ADVERTISING AGENCY.

E. Bird Wilson, who since 1909 has been manager of the advertising department of the Bankers Trust Company of New York City, has organized an advertising agency which will direct its activities toward banking publicity. The new enterprise will transact business under the name of "Edwin Bird Wilson, Inc.", and has already established its offices at 14 Wall Street, New York, on the 8th floor of the Bankers Trust Company building.

Mr. Wilson's ability in the advertising field is known throughout the length and breadth of the United States. For the past seven years he has been the directing

Mr. E. B. Wilson,

force in all the advertising of the Bankers Trust Co. and the American Bankers' Association Travellers Cheques. The brilliant work which he has done during this period has benefited not only the concerns with which he has been directly associated, but banks all over the country which have made use of his valuable advertising suggestions and ideas. The wide circle of acquaintances which he has built up is due in part to his co-operation with large numbers of banking institutions upon matters pertaining to their local advertising of A.B.A. Cheques.

He has always been a leader in progressive bank advertising ideas and has advocated many successful advertising innovations. Among the many plans which he has advanced for the building up of the business of a bank is that of community

advertising, particularly among trust companies for the purpose of educating the public to the advantages of the corporate management of estates.

The new agency will not only furnish an exclusive and individual service to banks which require such a service, but will also place itself at the disposal of the banks which desire advertising matter of high quality, but which do not desire such matter for their exclusive use. By this plan, the smaller banks will be able to enjoy the benefits of the advanced advertising methods used by the largest financial institutions.

In engaging in business, Mr. Wilson does not sever his connection with the Bankers Trust Company. He will retain that company as one of his clients and will continue to manage and direct the advertising campaign of the American Bankers' Association Travellers Cheques.

EVERETT E. RISLEY MADE ASSISTANT CASHIER OF NATIONAL BANK OF COMMERCE.

Mr. Everett E. Risley has been appointed Assistant Cashier of the National Bank of Commerce of New York City, with which institution he has been associated for a number of years. During the period of his connection with the National Bank of Commerce he has given his attention particularly to the publicity and development work of the bank. He is widely known in banking circles, as for several years he has regularly attended many of the state bank conventions, held in different parts of the country, especially in the south and west, and the annual meetings of the American Bankers' Association.

EVERETT E. RISLEY,
Assitant Cashier National Bank of Commerce.

Mr. Risley graduated from Phillips Andover Academy and Williams College, and received an honorary degree of Master of Arts from Colgate University. Prior to his connection with the National Bank of Commerce in New York, he practised law in Utica, N. Y., his native city, and was Deputy Attorney General during the administration of Governor Hughes and legal adviser of the various financial departments of the State of New York.

BENJAMIN C. SAMMONS.

Benjamin C. Sammons, who for a number of years has been one of the vice-presidents of the Corn Exchange National Bank of Chicago, died on September 3rd at the Mercy Hospital in that city. Mr. Sammons was born in Blue Island Ill., and was fifty years old at the time of his death. His banking career began in the Commercial National Bank where he started as messenger in 1882. He afterwards was in the employ of the Merchants Loan & Trust Company of Chicago. He was cashier of the Old Northwestern National Bank at the time it consolidated with the Corn Exchange National and subsequently became vice-president of the latter institution.

A LETTER FROM A SUBSCRIBER.

The JOURNAL receives many letters of commendation. Occasionally one comes in which we feel impelled to publish. The following appreciative expression from Mr. Bucholz of The Omaha National Bank is one which we feel justified in reprinting.

1933
CAPITAL $1000.000.00

The Omaha National Bank

J. H. Millard, President
W. H. Bucholz, Vice President
W. M. Burgess, Vice President
J. E. Beckwith, Cashier
Frank Boyd, Assistant Cashier
B. G. Wilcox, Assistant Cashier
Ezra Millard, Assistant Cashier
C. F. Harrison, Assistant Cashier

Omaha, Nebraska, Sept. 5, 1916.

The Banking Law Journal,
27 Thames Street,
New York, N. Y.

Gentlemen:-

Enclosed please find draft for $4.00 in payment of the enclosed bill for the Banking Law Journal to July, 1917.

I value your publication very much and have been a subscriber for a great many years. I hardly feel I would be able to "keep house without it."

Very truly yours,

W H Bucholz

Enclosure.

WHB/L

WILLIAM M. ROSENDALE BECOMES CASHIER OF MARKET AND FULTON.

At a recent meeting of the board of directors of the Market & Fulton National Bank of New York City, held on September 12, 1916, Mr. William M. Rosendale was appointed cashier to fill the place made vacant by the death of John H. Carr.

Mr. Rosendale started as a boy in the Market & Fulton Bank, his first employment being that of messenger. He has passed from one position to another in the bank until his present elevation to the cashiership, and his latest promotion, like those which preceded, is a well deserved recognition of the merit of his services. He has been a prominent and enthusiastic worker in the American Institute of Banking and at one time held the presidency of the New York Chapter; he has also served as chairman of the Executive Council. Mr. Rosendale is well known as the author of a number of excellent articles on practical banking, which have from time to time appeared in various banking periodicals.

THE "FIRST NATIONAL" CORN SHOW.

The "First National" corn show for 1916 will be held on December 11th to 16th at St. Paul under the auspices of the First National Bank of St. Paul, Northwestern Trust Company of St. Paul and the bankers of the northwest.

The territory which will participate in this year's show remains the same as last year and includes eight states divided into districts as follows: Minnesota, six districts; Northwestern Wisconsin, two; North Dakota, six; South Dakota, six, Montana, six; Washington, three; Idaho, three; Oregon, two.

Four prizes will be awarded to the contestants from each district of each state. There will be first and second prizes for men and first and second prizes for boys in each of the 34 districts. The prizes for the boys will be similar in design and equal in value to the prizes of the adult contestants. In all there will be 136 silver and "goldyn bronze" cups as prizes. The competition will be restricted to districts and there will be no interdistrict competition. Each contestant must exhibit 10 ears of corn which may be of any variety of Indian corn, raised by the contestant on a field of not less than one acre. There is no entrance fee.

In determining the prize winners, the judge, who will be a man of recognized standing, will be governed by average size productiveness and general appearance.

The two banks through whose efforts the corn show has been made possible have adopted as their slogan "Corn and Cattle Contribute Capital for Bigger Bank Balances".

Pamphlets in which the full details of the second annual corn show are recited and entry blanks may be secured by application to bankers in any of the corn contest districts.

HERVEY SCHUMACHER ELECTED SECRETARY.

Hervey Schumacher has been elected secretary and treasurer of the Sun Shipbuilding Company, which is erecting a large plant at Chester, Pa., representing an outlay of $3,500,000. Mr. Schumacher has resigned as cashier of the Peoples National Bank of Pittsburgh in order to accept his new position. He has been associated with the Peoples National for more than 25 years, having been made cashier in 1903, and a member of the board of directors in 1912.

LOUIS F. KIESEWETTER WITH NEW YORK BANK.

Louis F. Kiesewetter has resigned as vice-president of the Ohio National Bank of Columbus, Ohio, and will soon assume the duties of vice-president of the Bank of New York, N. B. A., New York City. His resignation becomes effective on September 30th. He will continue to hold the position of director of the bank from which he is resigning until the next annual meeting of the stockholders.

Mr. Kiesewetter has been with the Ohio National Bank since August 1, 1888, the day upon which it opened as a savings bank. He has been one of the directors for more than ten years and, during the period of his association with the bank, he has occupied every position in the bank except that of president, which position is held by his father.

INJUNCTION AGAINST SEATTLE CLEARING HOUSE.

An injunction, enjoining the dissolution of the Seattle Clearing House Association and the re-organization of a new association has been issued by Judge Kenneth McIntosh, of the King County Superior Court. The injunction was obtained by the Peoples Savings Bank of Seattle, one of the largest savings institutions in that part of the country. In its complaint, the Peoples Savings Bank alleges that a controversy arose between it and other members of the clearing house because of its refusal to comply with the clearing house rule reducing the interest rate on savings deposits from 4 to 3%. It was further alleged that certain other members of the clearing house then endeavored to put the Peoples Savings Bank out of the

association by a process of dissolution and re-organization. The litigation which will follow the issuance of the injunction is bound to give rise to some novel questions of law which will be of considerable interest to banks and clearing houses throughout the country.

THE INVESTMENT BANKERS FIFTH ANNUAL CONVENTION.

Secretary Frederick R. Fenton, of the Investment Bankers Association of America, has just issued a bulletin dealing with arrangements for the Fifth Annual Convention to be held in Cincinnati, October 1st, 2nd, 3rd, and 4th.

The advance hotel registrations and everything else point to a large attendance. A special train will leave New York for the convention city on Saturday afternoon September 30th, via Pennsylvania R.R. for the convenience of bankers in New York and its vicinity who expect to attend the present convention.

The first business session will be called to order at 9 A.M. on Monday morning October 2nd, at the Hotel Sinton.

At this meeting there will be elected a President, five Vice-Presidents, Secretary and Treasurer for the ensuing year; eight members of the Board of Governors for the term of three years; one to fill an unexpired term of one year; one to fill an unexpired term of two years, and there will be transacted such other business as may properly come before the meeting.

The following program has been announced for the four days of the convention.

Sunday, October 1, 1916:

Arrival of "Investment Bankers Specials."

9:00 A. M.—Registration of delegates. Credentials issued. Committee meetings:

10:00 A. M.—Board of governors meeting.

2:00 P. M.—Motor trip over the boulevard system of Cincinnati.

6:30 P. M.—Buffet supper at the Zoological Gardens.

Monday, October 2, 1916.

9:00 A. M. to 12:30 P. M.—Opening session of convention.

2:00 P. M. to 4:00 P. M.—Business session.

4:15 P. M.—Pleasure trip down the Ohio River, returning about 11:30 P.M.

Tuesday, October 3, 1916.

9:30 A. M. to 12:30 P. M.—Business session.

1:30 P. M.—The afternoon will be devoted entirely to recreation at the Cincinnati Country Club; tennis, golf and other sports will be in order. A golf tournament is being arranged, and later on delegates will be requested to turn in their club handicaps to the Cincinnati Committee.

8:00 P. M.—Smoker. Announcement of golf tournament champion and awarding of prizes.

Wednesday, October 4, 1916:

9:30 A. M. to 12:30 P. M.—Business session.

2:00 P. M. to 4:00 P. M.—Business session.

7.00 P. M.—Banquet at Hotel Gibson.

In accordance with the constitution and by-laws of the association, the board of governors, at their meeting in Kansas City, Mo., on June 5 and 6, 1916, selected the following regular ticket of officers and board of governors to be voted upon at the annual election:

For president, Lewis B. Franklin, Guaranty Trust Company of New York, N. Y.

For vice-presidents, Allen G. Hoyt, N. W. Halsey & Co., New York; John E. Blunt, Jr., Merchants Loan & Trust Company, Chicago; Barrett Wendell, Jr., Lee, Higginson & Co., Boston; H. P. Wright, H. P. Wright Investment Co., Kansas City, Mo.; William G. Baker, Jr., Baker, Watts & Co., Baltimore.

For secretary, Frederick R. Fenton, Devitt, Tremble & Co., Chicago.

For treasurer, J. Sheppard Smith, Mississippi Valley Trust Company, St. Louis.

For board of governors:—Daniel K. Drake, Perrin, Drake & Riley, Inc., Los

Angeles; Edwin White, White, Grubbs & Co., St. Paul; James N. Wright, James N. Wright & Co., Denver; John W. Hollowell, Stone & Webster, Boston; Stacy C. Richmond, Winslow, Lanier & Co., New York; Howard F. Beebe, Harris, Forbes & Co., New York; Lewis H. Parsons, Graham & Co., Philadelphia; William G. Lerchen, Walting Lerchen & Co., Detroit; Charles H. Gilman, Charles H. Gilman & Co., Portland, Me.; David A. Edgar, Edgar, Ricker & Co., Milwaukee.

INSTRUMENT PAYABLE IN EXCHANGE NOT NEGOTIABLE.

The following opinion of M. C. Elliott, Counsel of the Federal Reserve Board, to the effect that a bill or note payable "in exchange" is not negotiable and that Federal Reserve Banks cannot be required instruments drawn in this matter for collection or credit, is reprinted from the September *Federal Reserve Bulletin*

AUGUST 10, 1916.

SIR: The opinion of this office has been requested on the question of whether or not a bill or note made "payable in exchange at current rates" is a negotiable instrument, and whether or not a Federal Reserve Bank may legally be required to receive it for collection or credit.

An instrument to be negotiable must contain an unconditional promise or order to pay a sum certain in *money*. Negotiable instruments law, section 1, subsection 2. "Money" in this sense has generally been construed to mean whatever may be used as legal tender for the payment of debts at the place where the bill or note is payable. (Norton on Bills and Notes, fourth edition, page 61.) Under the Revised Statutes of the United States legal tender has been held to include United States gold coins, United States notes, Treasury notes, silver dollars, and subsidiary silver coins and minor coins to a limited extent. Revised Statutes of the United States, sections 3584 to 3590. (See Legal tender cases, 12 Wall., 457; Legal tender case, 110 U. S., 421).

The question to be considered, therefore, is whether a bill or note payable "in exchange" is a note payable in "a sum certain in *money*" as contemplated by the negotiable instruments law and other statutes relating to such instruments.

There are many cases which hold that an instrument calling for the payment of a sum certain in money "with exchange" is not negotiable, because of the fact that the fluctuations in the rate of exchange make it impossible definitely to determine the exact amount payable. (Lowe v. Bliss, 24 Ill., 168; Philadelphia Bank v. Newkirk, 2 Miles, 442; Fitzharris v. Leggatt, 10 Mo. App., 527; Hughitt v. Johnson, 28 Fed. Rep., 865; Read v. McNulty, 12 Rich. Law., 445; Carroll Co. Savings Bank v. Strother, 28 S.C., 504). There are a number of other cases, however, which hold that such instruments are negotiable, on the ground that, though a negotiable instrument must call for the payment of a definite sum of money, nevertheless, the current rate of exchange between two places at a particular date is usually a matter of common commercial knowledge—It is at least easily ascertainable by anyone—and, in consequence, the various parties to the instrument can always without difficulty to determine the exact amount necessary to discharge it.

The various test writers, such as Daniel, Randolph, Tiedeman, and Norton, agree that these are the better considered cases and that the custom and convenience of merchants require the introduction of the element of exchange in that manner. The following cases hold that an instrument made payable "with exchange" is negotiable: Hastings v. Thompson, 54 Minn., 184; Bradley v. Lill, 4 Biss., 473, Fed. Cas. 1, 783; Smith v. Kendall, 9 Mich., 242; Leggett v. Jones, 10 Wis., 35; Morgan v. Edwards, 53 Wis., 599.

Though the cases are not in accord on this particular phase of the subject, section 2, subsection 4, of the negotiable instruments law, has settled further dispute in all of those States in which it has been adopted. It is there provided that "The sum payable is a sum certain within the meaning of this act, although it is to be paid *with exchange* whether at a fixed rate or at the current rate."

The question under consideration, however, is not whether a note payable in a definite sum of money "with exchange"is negotiable, but rather whether a note payable "*in* exchange" is negotiable,and the courts and the authorities agree that in this latter case an instrument which would otherwise be negotiable is rendered nonnegotiable if it is made payable "in exchange." (Norton on Bills and Notes, 4th ed., p. 63; First National Bank of Brooklyn v. Slette, 67 Minn., 425; Chandler v. Calvert, 87 Mo. App., 368.)

In an old case decided in 1808, Jones v. Fales, 4 Mass., 245, the Supreme Court of Massachusetts held that an instrument payable in "foreign bills" was nonnegotiable. The court construed the term "foreign bills" to mean bills of other State banks, which at that time varied greatly in value in different localities, and held the instrument to be nonnegotiable. In discussing this question, the court said: that by the promise the maker of the note did not bind himself to pay cash, but something, the value of which was to be estimated in cash, that the note objected to is not a cash note.

So, also, a certificate of deposit for "checks payable to the order" of the depositor was held nonnegotiable in the case of First National Bank v. Greenville National Bank, 84 Tex., 40.

The precise case of a note payable in exchange was considered in the case of First National Bank of Brooklyn v. Slette, decided by the Supreme Court of Minnesota, 67 Minn. Rep., 425, where the action was based upon the following obligation:

For value received, we promise to pay to the order of the John Good Cordage & Machine Company the sum of sixteen hundred and seventy-three dollars, as follows: Payable by New York or Chicago exchange; $560, November 15; $560 December 1; $560, December 15. Without interest, if paid as due; if not, then legal rate from date until paid.

The only question before the court was whether this instrument was negotiable. The court said:

It is absolutely essential, in order to constitute a promissory note under the law merchant, that the promise be to pay in money. If this instrument can be construed as an absolute promise to pay in money $1,673, with exchange it is negotiable; otherwise, not. Hastings v. Thompson, 54 Minn., 184, 55 N. W., 968.

The case of Bradley v. Lill (4 Biss., 473, Fed Cas. No. 1,783) is the only one to which our attention has been called where the language of the instrument was similar to the one under consideration. In the case referred to the note was made in Chicago and was payable at New York "in" exchange; and it was held that the note was negotiable upon the ground that the promise was to pay the sum named in the note "with" exchange, which was a mere incident to the debt.

In the case at bar the note is not payable at any particular place, and the promise is not to pay a given number of dollars in money "with"—that is, plus—the current rate of exchange, but it is to pay the sum named in the note by New York or Chicago exchange. The holder of this instrument can not demand in payment thereof $1,673 in money, plus the costs of exchange, for the maker is not bound to discharge his obligation except by means of inland bills on New York or Chicago. Nor can the maker tender in payment $1,673 in money, with the cost of exchange for his promise is to make payment by inland bills, which he must purchase in the market. The instrument, then, is not payable in money. and is therefore not a promissory note within the law merchant. (Easton v. Hyde, 13 Minn., 83 (90); Jones v. Fales, 4 Mass., 245; Irvine v. Lowry, 14 Pet., 293; 1 Daniel, Neg. Inst., secs. 55, 56; Tied. Com. Paper, sec. 29; 1 Rand, Com. Paper, sec. 90.) In reaching this conclusion we have not been unmindful of the fact that, in commercial usage, bills of exchange are regarded as substitutes for money; but this usage can not make them such.

This same distinction between a note payable "in" exchange and a note payable "with" exchange is very clearly pointed out in the Missouri case of Chandler v.

Calvert (87 Mo. App., 368), in which the court, after stating that there was some dispute about whether a note payable "with exchange" is negotiable, held that there is no doubt that one payable "in exchange" is not a valid promissory note. The court said:

It seems to be clear that anything embodied in the contract which renders the amount therein to be paid uncertain ought to destroy the negotiability of the paper, if we pay the least attention to the definition of such commercial security and the object and purpose of its being brought into use. The view we here take is supported by the weight of authority. (Bank v. Newkirk, 2 Miles, 442; Lowe v. Bliss, 24 Ill., 168; Bank v. Bynum, 84 N. C., 24; Ready v. McNulty, 12 Rich. L., 445.)

There are cases in which a bill of exchange is drawn and made payable at one and the same place "with exchange," where it is held that, being drawn and made payable at one place, there can be no exchange, and therefore the words quoted are meaningless and should not be regarded. (Bank v. Goode, 44 Mo. App., 129; Hill v. Todd, 29 Ill., 101; Clauser v. Stone, 29 Ill., 114.) Those cases were decided not in opposition to the rule as we state it, but in recognition of it. * * *

But in point of fact the note here in controversy does not belong to the class we have been discussing. For this note is not a note payable in money "with exchange". *It is not a note payable in money at all. It is "payable in New York exchange."* The provision is wholly unlike those which we have been considering. An instrument to be a note, in the absence of a statute, must be payable in money. As it is the purpose of promissory notes to represent money and to perform, so far as possible, all its functions, it is of course necessary that they should be payable in money (1 Parsons Notes & B., 45) and "in money only." Story on Prom. Notes, sec. 17. Therefore a promise to pay a sum of money "in bank bills or notes," or "in foreign bills," or "in current bank notes," is not a promissory note. Story on Prom. Notes, sec. 18. So an instrument payable "in current funds at Pittsburgh," was not payable in money and was therefore held not negotiable. (Wright v. Hart, 44 Pa., St. 454.) A note payable in "Pennsylvania or New York paper currency" was held not to be negotiable. (Leiber v. Goodrich, 5 Cowen, 186.) And so it was held of a note payable "in Canada money." (Thompson v. Sloan, 23 Wend., 71.) An early case in this State, which has never been questioned, sustains the foregoing statements of the law. Farwell v. Kennett, 7 Mo., 595, where it was held that an instrument, drawn payable "in currency," was not a bill of exchange.

New York exchange is not money; it is a commodity, or, in other words, it is property. And to make an instrument payable in property, a note requires the aid of a statute. We have such a statute in this State. (R. S. 1899, sec. 894.) In obedience to the statute the instrument in suit must be denominated a note. It is, however, not commercial paper; it is not a negotiable note.

In the case of Bradley v. Lill (4 Biss., 473), a bill payable "in exchange" was held to be a negotiable instrument but in that case, however, the court construed the bill as one payable in money "with exchange," so that it is not inconsistent with the general rule laid down by the text writers and the various courts to the effect that a bill or note payable "in exchange" is not payable in money, but is payable in another instrument, a commodity or property which is not money, and that it is, therefore, not a valid negotiable instrument.

A check is generally defined as "a draft or order upon a bank * * * for the payment at all events of a *certain sum of money* * * * payable instantly on demand," and a draft is defined as "an order for the *payment of money* drawn by one person or another." One of the essential elements of each is that the payment be in "money." Inasmuch, therefore, as instruments drawn payable "in exchange" fail to comply with the requisites of a check or draft as generally defined and as contemplated by section 16 of the Federal Reserve Act, it is the opinion of this office that Federal Reserve Banks can not legally be required to receive such instruments for collection or credit.

To Hon. W. P. G. HARDING,
Governor Federal Reserve Board.

Respectfully, M. C. ELLIOTT, *Counsel.*

COMPARATIVE NEW YORK BANK STATEMENT.

The following table shows the loans and deposits of the associated banks, reported to the New York Clearing House for the week ending Sept. 11, 1915, and Sept. 9, 1916, respectively, together with a computation of the proportionate increase or decrease of deposits for the year.

BANK	Loans and Discounts Average 1915	Loans and Discounts Average 1916	Legal Net Deposits Average 1915	Legal Net Deposits Average 1916	Deposits Per cent of Inc.	Deposits Per cent of Dec.
Members of Federal Reserve Bank.						
Bank of N. Y. N. B. A....	$34,419,000	$33,651,000	$32,687,000	$31,418,000	....	3.8
Merchants National.....	29,255,000	29,416,000	28,964,000	28,338,000	....	2.1
Mechanics & Metals Nat.	108,263,000	117,744,000	124,071,000	133,262,000	7.3	....
National City.....	260,828,000	401,904,000	345,562,000	433,144,000	25.3	....
Chemical National.....	34,100,000	36,363,000	29,844,000	30,537,000	2.3	....
Atlantic National.....	10,488,000	12,059,000	10,545,000	13,118,000	24.4	....
Nat. Butchers & Drovers	1,929,000	2,805,000	1,475,000	2,073,000	40.5	....
American Exchange Nat.	79,592,000	87,450,000	80,991,000	90,175,000	11.3	....
Nat. Bank of Commerce..	200,423,000	224,738,000	197,969,000	227,379,000	14.8	....
Chatham & Phenix Nat...	48,315,000	60,405,000	50,080,000	64,626,000	29.	....
Hanover National.....	109,672,000	114,989,000	126,904,000	127,859,000	.7	....
Citizens Central Nat....	26,169,000	27,348,000	23,916,000	26,098,000	9.	....
Market & Fulton Nat....	9,316,000	10,175,000	9,773,000	9,682,000	....	.9
Corn Exchange Bank....	80,270,000	87,298,000	92,632,000	97,088,000	4.8	....
Importers' & Traders Nat	31,801,000	32,990,000	28,548,000	29,712,000	4.	....
National Park.....	125,773,000	137,013,000	126,788,000	141,699,000	11.7	....
East River National.....	2,191,000	2,432,000	1,916,000	2,343,000	22.2	....
Second National.....	15,524,000	17,670,000	12,738,000	14,813,000	16.2	....
First National.....	144,712,000	169,503,000	143,772,000	165,479,000	15.	....
Irving National.....	56,575,000	69,911,000	64,329,000	78,540,000	22.	....
N. Y. County National...	9,701,000	10,282,000	9,470,000	10,372,000	9.5	....
Chase National.....	142,286,000	190,985,000	182,666,000	213,842,000	17.	....
Lincoln National.....	16,192,000	18,533,000	17,869,000	18,989,000	6.2	....
Garfield National.....	8,698,000	9,618,000	8,995,000	9,054,000	.6	....
Fifth National.....	4,578,000	5,354,000	4,636,000	5,304,000	14.4	....
Seaboard National.....	31,771,000	38,424,000	37,213,000	43,830,000	17.7	....
Liberty National.....	39,267,000	52,932,000	46,864,000	59,127,000	26.	....
Coal & Iron National....	7,891,000	9,042,000	8,051,000	9,279,000	15.2	....
Union Exchange Nat....	9,966,000	11,515,000	9,330,000	10,548,000	13.	....
Nassau Nat. Bank Bklyn	9,006,000	9,784,000	8,333,000	9,307,000	11.6	....
Broadway Trust Co.....	16,433,000	20,531,000	17,518,000	22,284,000	27.2	....
State Banks not Members of Federal Reserve Bank.						
Bank of the Manhattan Co.	39,960,000	43,055,000	47,560,000	48,677,000	2.3	....
Bank of America.....	30,968,000	30,409,000	29,512,000	29,122,000	....	1.3
Greenwich.....	10,629,000	11,256,000	11,533,000	11,906,000	3.2	....
Pacific.....	4,885,000	6,744,000	4,677,000	6,450,000	37.9	....
People's.....	2,330,000	2,606,000	2,286,000	2,589,000	13.2	....
Metropolitan Bank.....	12,317,000	16,276,000	10,331,000	15,100,000	46.1	....
Bowery.....	3,560,000	4,044,000	3,012,000	3,645,000	21.	....
German American.....	4,787,000	6,197,000	4,481,000	6,063,000	35.3	....
Fifth Avenue.....	14,795,000	17,015,000	16,588,000	18,286,000	10.2	....
German Exchange.....	3,682,000	5,042,000	3,478,000	4,561,000	31.1	....
Germania.....	5,730,000	6,085,000	5,979,000	6,311,000	5.5	....
Bank of the Metropolis...	13,487,000	13,981,000	12,638,000	13,077,000	3.4	....
West Side Bank.....	4,583,000	4,468,000	4,485,000	4,517,000	.7	....
N. Y. Produce Exchange.	11,679,000	14,601,000	13,580,000	15,770,000	16.1	....
State Bank.....	19,373,000	22,962,000	21,232,000	25,630,000	20.7	....
Totals.....	$1,887,965,000	$2,257,605,000	$2,075,821,000	$2,371,023,000		